Eunice testimony -
Guidance Chapter 40 utilized and Diana definition.
Adventitious Roots Review
Buttressing widened area on tree at base.
elbow bend
Water Stains
Dolphins/Deadman in Place since the 60's
Kinnickinnic Park Pier placed in 1991.
Lepak + water level Research.
staining. could vary depending time and duration.

...

Gary Lepak -

...

Take names at end of hearing that are requiring copies.

...

...look at reaches of river where old OHWM's
...were determined.
...review Gary's exhibits carefully.

...

COE testimony - COE uses same term. But
...COE testimony that DNR + COE may be
...different and the public should be aware of those
...changes.
...Flat Pool and Fed. OHWM on St. Croix Lake.
...OHWM at Lake St. Croix Beach 682.5

...

Molly Shodeen – MDNR Hydrologist,
Watercourse/Reservoirs + Flowages waterlevel
hebd at all summer lows,
Previous attempts to use waterlevel for
water courses. 679.52 (1929 datum) at Confluence
w/Miss. + St. Croix. South, North of
Stillwater they use a higher level.

Francis Ogden – DNR's elevation vary
by as much as 5'. 10' difference in
elevation, Need consistency + Reliability
on both sides.
Sites utilized didn't meet the standards, disturbed
sights. ie. man made beach. disturbed floods.
Tree, N exhibit 10 heathly.

Bill Clapp – Pres. St. Croix River Assn. – 250 folks.
both sides of River. Agency WDNR had to Redo every time
675 too low. 1912 datum 680.00 for MDNR.
Ordinary – Not extreme. Northern Red Cedar –
none – water tolerant. Encourage WDNR to not lowball
the River. elevation. 1/3 members

Ron Carlson – Sierra Club. – Support DNR's
tentative determination. Serve purpose of lowering
the Number. Engineering Background mile 15.8
across from Troy Park undisturbed. Red Cedars well above 680's

OPENING STATEMENT

"WE ARE NOW ON THE RECORD "..... TURN ON RECORDER

My name is Dale Simon, and I have been asked to serve as the hearing examiner for this public informational hearing today in connection with the Department of Natural Resources interest to issue a ruling regarding the OHWM of the Lower St. Croix River. My role as the hearing examiner is to assure that the public has a reasonable opportunity to provide input on the Department's initial ordinary high water mark determination. I am also responsible for writing the final department determination of the OHWM on this waterway..

The Department (DNR), on its own motion, began the declaratory ruling process under s. 227.41, Stats., in August, 2004 after the Natural Resources Board approved revisions to ch. NR 118, Wis. Adm. Code, Standards for the Lower St. Croix National Scenic Riverway. The Department filed a petition for a declaratory ruling regarding the OHWM for the Lower St. Croix River adjacent to St. Croix and Pierce Counties, Wisconsin. On August 12, 2005, the Department filed a Notice of Public Hearing concerning this matter which was subsequently published in the Hudson Star Observer. The notice advised the public that the Department will hold a public informational hearing on August 31, 2005 at 6:00 PM in the St. Croix County Government Center Community Room, 1101 Carmichael Rd., Hudson, Wisconsin.

As part of the declaratory ruling process, the Department of Natural Resources has set this public informational hearing on August 31, 2005, in Hudson, Wisconsin to afford full opportunity for hearing to interested parties, pursuant to s. 227.41, Wis. Stats.

The purpose of the informational hearing is to receive comments and information, provide information, and respond to questions regarding the Department's initial OHWM determination for the Lower St. Croix River adjacent to St. Croix and Pierce Counties, Wisconsin.

The primary issue to be considered at tonight's hearing is the submittal of any evidence of additional biological and/or physical data that may be used in making an OHWM determination on the Lower St. Croix River. The OHWM delineates the boundary between the bed of a waterway and the adjacent land.

> The "ordinary high water mark" is defined by the Wisconsin Supreme Court in Diana Shooting Club v. Husting (1914), 156 Wis.261, 272 as the "point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of vegetation, or other easily recognized characteristic. The Court went on further to say "And where the bank or shore at any particular place is of such character that it is impossible or difficult to ascertain where the point of ordinary high water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below the ordinary high water mark.

Subsequent to the Diana case the Court's have frequently upheld the Diana definition of the OHWM.

(**ASK QUESTION OF AUDIENCE**) Does everyone understand the definition of OHWM?

If you have come here tonight with the expectation of providing written or oral statements concerning issues other than the OHWM determination, please do not indicate on your appearance slip that you would like to make an oral statement tonight. Testimony concerning any other matters except the determination of the OHWM will NOT be allowed as a part of this proceeding.

The hearing tonight is non-adversarial in nature. Those of you filling out an appearance slip and wishing to make a statement should indicate whether you want to be included as a "party" to the proceeding under s. 227.41(1). Please note that s. 227.41 (1) states that the ruling issued as a result of the hearing shall bind WDNR and all parties to the proceeding on the statement of facts alleged,

unless the ruling is altered or set aside by a court. S. 227.41(1) further provides that a declaratory ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions. Sections 227.52 and 227.53, Stats., govern judicial review of administrative decisions.

Persons entering an appearance at the hearing may make statements, offer information, or ask questions concerning the matter being heard. Such statements need not be made under oath. Cross examination of those who speak is not permitted, but I may allow clarifying questions addressed to those who speak. Please keep your testimony as brief as possible in order to allow everyone who wishes to speak an opportunity to do so.

Anyone who wishes to receive a written copy of the Department's final decision regarding the ordinary high water mark of this waterway please so indicate on your appearance slip and make sure your name address and Zip Code are clearly printed on your slip. Written comments and information on the OHWM determination may be submitted to myself, Dale Simon - FH/4, Bureau of Fisheries Management and Habitat Protection, PO Box 7921, Madison, WI 53707-7921 and must be received by me by no later than September 30, 2005. Written comments will have the same weight and effect as oral statements presented at the hearing. The Department will consider all timely comments, written and oral, before it makes a final OHWM determination. For those of you anticipating a decision tonight, that will NOT happen as I will need to review all the information submitted tonight and any other information I receive by September 30, 2005. I hope to issue a formal decision on this matter by November 15, 2005.

As I previously noted the Department's final OHWM decision document constitutes a formal department determination which may be reviewable by the courts pursuant to Sections 227.52 and 227.53, Wisconsin Statutes.

Following a presentation by Department Staff of their initial OHWM determination, I will ask those that have submitted appearance slips indicating they wish to make an oral statement, to come to the table in the front of the room, identify yourself and give your statement or ask clarifying questions. **(note: TIME LIMIT MAY BE IMPOSED DEPENDING ON ATTENDANCE)** This process is not intended to make it difficult for you to offer your statements; however, it provides us an opportunity to record your comments so the Department has the ability to review a complete record. Please refrain from conversations in the audience during testimony.

Once again, I would like to reiterate the only testimony that will be allowed tonight must pertain to the OHWM determination itself, nothing more, nothing less.

From this record a final Department ruling will be made regarding the ordinary high water mark of the Lower St. Croix River. If you have not submitted an appearance slip but wish to make a statement or ask clarifying questions later in the hearing, I will give you that opportunity after I receive your appearance slip so that we will have it as a matter of record.

At this time I will ask Department Staff to present their information regarding their initial ordinary high water mark determination.

PUBLIC COMMENT

Please state your name, address, who you represent, your position (if any) and the content of your comment or concern or questions.

CLOSING STATEMENT

I would again like to remind you that written comments and information must be received by me, Dale Simon, by no later than September 30, 2005 and they will have the same weight and effect of oral comments and statements given at the hearing tonight.

If there are no further comments or questions, I want to thank you on behalf of the Department of Natural Resources for your attendance here tonight. This hearing is now closed.

111 – 4963 ... Houghton 8-31-05
datum. State Zone of the St Croix River

Exhibits

1 - Bob B's opening intro
2 - Gary Lepaks Powerpoint.
3 - C.O.E. comments on OHWM. Dan's Testimony for COE.
4 - Eunices Exhibits in Packet.
5 - National Park Service
6 - CD Eunice.
7 - Lepak CD.
8 - MDNR letter
9 - Francis Ogden Photos on Mr. Rollies Property.
10 - " "
11 - " "
12 - Paul Mosby Cooperative Mgt. Plan voted unanimously that 675.0 should be used at the setback requirement.
13 - Paul letter from Hudson using 677 as OHW M.
14 - Paul Letter From St. Croix Landowners Assn.
15 - Letter from MDNR to Paul Mosby

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

Operations
Regulatory Branch

Mr. B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison, Wisconsin 53707

Dear Mr. Simon,

This letter concerns the Notice of Public Hearing regarding the Petition of the Department of Natural Resources for a determination of the Ordinary High Water Mark (OHWM) on the portion of the St. Croix River commonly known as Lake St. Croix. This hearing is scheduled for Wednesday, August 31, 2005, at the St. Croix County Government Center.

While the Corps has no comment on the proposal of the WDNR to establish an OHWM for the purposes of administering its state regulatory programs, I believe that it is important to note that the Corps also uses the term Ordinary High Water Mark in our federal Regulatory programs and that the term may have different meanings under federal and state law.

In reviewing federal and state OHWM determinations on the St. Croix River, it has been our experience that, in some circumstances, the Corps has determined an OHWM that is different than the OHWM established under Wisconsin law. Therefore, we believe that it is important that both the WDNR and the general public be aware of the potential jurisdictional differences between our respective state and federal regulatory programs.

As a matter of general information, the U.S. Army Corps of Engineers regulates dredging, the construction of structures, other work, and discharges of dredged or fill material in the St. Croix River under the authority of the Rivers & Harbors Act of 1899 and section 404 of the Clean Water Act. The Corps' regulations define the term Ordinary High Water Mark under those two laws as follows:

For purposes of the Rivers and Harbors Act of 1899, the Corps' regulations at 33 C.F.R. 329.11 (a)(1) define "The "ordinary high water mark" on non-tidal rivers is the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas."

For purposes of § 404 of the Clean Water Act, the Corps' regulations at 33 C.F.R. 328.8(e) provide the following definition: "The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas."

Many people are familiar with the term "flat pool" that the Corps uses with respect to regulating water elevations at the locks and dams along the Mississippi River. Lock and Dam #3 has a flat pool that extends up the St. Croix River, past Lake St. Croix. Please note, however, that the flat pool elevation is not equivalent to the OHWM and those terms should not be used interchangeably.

I believe that it would be helpful to the general public if WDNR's OHWM determination included a notation clarifying that it is applicable only to the state's regulatory programs and that the Corps should also be contacted regarding its federal permitting requirements.

Thank you for the opportunity to comment at this proposal.

Sincerely,

Robert J. Whiting
Chief, Regulatory Branch

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

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Operations
Regulatory Branch

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Wisconsin Department of Natural Resources
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Madison, Wisconsin 53707

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Thank you for the opportunity to comment at this proposal.

Sincerely,

Robert J. Whiting
Chief, Regulatory Branch

TOWN of TROY

654 Glover Road, Hudson, WI 54016
Phone: (715)425-2665 Fax: (715)425-2551

September 12, 2005

Dale Simon, FH/4
P.O. Box 7921
Madison, WI 53707-7921

Dear Mr. Simon;

The Town of Troy Plan Commission, at the September 1, 2005 meeting, unanimously requested that the Ordinary High Water Mark declaratory rule hearing comment period be extended by 15-30 days so as to allow a formal reply by the Town Plan Commission and Board (and any other interested municipalities whose responses require a noticed formal public hearing).

Thank-you for your consideration.

Sincerely,

Sharon Provos

Sharon Provos
Clerk/Treasurer

Simon, Byron D.

From: Weitz, David A.
Sent: Friday, August 12, 2005 11:10 AM
To: Weaver, Mary; Simon, Byron D.; Baumann, Daniel G.; Holtan, Paul R.
Subject: OHWM St Croix hearing notice.doc

Mary: There were two or three errors in the two versions of this I sent to you earlier. Dale Simon brought these to my attention and we have corrected this copy. Please public notice it in the Hudson Star Observer. Paul -- can you place this on the DNR web calendar? I will get out a local news release. Thanks all. Dave

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
NOTICE OF PUBLIC HEARING

REGARDING THE PETITION OF THE DEPARTMENT OF NATURAL RESOURCES FOR A DETERMINATION OF THE ORDINARY HIGH WATER MARK OF PORTIONS OF THE ST. CROIX RIVER

On May 26, 2004, The Natural Resource Board approved revisions to Wisconsin Administrative Code NR 118. As part of the public testimony at that hearing, the Ordinary High Water Mark for the Lower St. Croix River was reported by members of the public to be inaccurate and needed to be revisited. As such, the Department of Natural Resources has self petitioned for a declaratory ruling regarding the ordinary high water mark of the St Croix River focussing on the general area commonly known as Lake St Croix. The properties in question are generally located along the Lower St. Croix River, St Croix and Pierce Counties, Wisconsin. In August 2004 the Department started the declaratory ruling process. As part of the declaratory ruling process, the Department has scheduled a hearing to afford full opportunity for input from interested parties, pursuant to s. 227.41, Wis. Stats.

THEREFORE, NOTICE IS HEREBY GIVEN that the Department of Natural Resources will hold a public informational hearing to receive comments, provide information and respond to questions regarding the ordinary high water mark determination. The hearing will be held:

Date and Time: **Wednesday, August 31, 2005 at 6:00 p.m.**
Location: **St Croix County Government Center Community Room**
1101 Carmichael Rd
Hudson, WI 54016

The public is invited to attend this hearing. Persons entering an appearance at the hearing may make statements, offer evidence or ask questions concerning the matter being heard. Such statements need not be made under oath. Cross–examination of those who speak is not permitted, but the presiding officer may allow clarifying questions addressed to those who speak. The presiding officer shall determine the order in which people may speak, and may continue the hearing on another date or limit the length of the presentations if it appears there will not be enough time for all who wish to speak, or if the presentations are unduly repetitious.

Written comments on the ordinary high water mark determination may be submitted to B. Dale Simon, 101 S. Webster, FH/6, Madison WI 53707 and must be received by Mr. Simon no later than 4:00 PM, September 30, 2005. Written comments will have the same weight and effect as oral statements presented at the hearing. The Department will consider all timely comments, written and oral, before it makes a final ordinary high water mark determination.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dale Simon at (608) 267-9868 with specific information on your request at least 5 days before the date of the hearing.

Dated at Eau Claire, Wisconsin **this 12th day of August, 2005.**

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Scott Humrickhouse, Regional Director, West Central Region

Post, Eunice A.

From: Molly Shodeen [molly.shodeen@dnr.state.mn.us]
Sent: Tuesday, August 30, 2005 3:42 PM
To: Dale Homuth; Glen Yakel; Kent Lokkesmoe; Scot Johnson; Post, Eunice A.; Baczynski, Robert J.
Subject: Final Wi OHW letter for Hearing

Attachments: Wi OHW2-ltr.doc

Wi OHW2-ltr.doc
(30 KB)

This is what I will read into the hearing record.

Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 772-7910 Fax: (651) 772-7977

August 31, 2005

Mr. B. Dale Simon
101 South Webster
FH/6
Madison, WI 53707

RE: St. Croix Ordinary High Water Mark Determination

Dear Mr. Simon:

You will hear many references to Minnesota's Ordinary High Water Elevation (OHW) in relation to the St. Croix, so I would like the record to reflect some of differences and challenges on how the two states apply and determine OHW for regulatory purposes.

Minnesota's definition of OHW is statutory (103G.005 Subd 14) and reads like this: Ordinary high water level means the boundary of waterbasins, watercourses, public waters and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial;
(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel;
(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Waterbasin is defined as an enclosed natural depression with definable banks. There are no definitions for watercourse, reservoir or flowage in statute or rule. Over the last 10 years, Minnesota DNR has been studying the application of our OHW definition on the Mississippi River system. The Mississippi system is a series of lock and dams, which creates pools. Similar to watercourse, reservoir and flowage, there is no definition of pool in statute or rule. The Mississippi pools do not function and are not operated like named reservoirs in other parts of our state such as the Leech Lake, Winnibigoshish, Red Lake, Big Sandy, etc.

Lake St. Croix existed as a wide spot in the river just like Lake Pepin on the Mississippi prior to lock and dam construction. It has some lake characteristics, but also has undeniable riverine characteristics such as flow and recurrent flooding. Bulletin 25, An Inventory of Minnesota Lakes, published in1968, describes Pepin as being formed by sediments deposited by the Chippewa River which caused partial damming. Likewise, it describes the St. Croix as

originally formed by the damming of Glacial River St. Croix by the Mississippi River, which created a delta across the head of the basin.

Since the pools on the Mississippi do not meet common definitions for reservoir or flowage, we have decided that previous attempts to use a "normal summer pool " elevation as the OHW on these waters was not in accordance with statute. In Minnesota DNR Region 3, we find that the scientific evidence indicates that these river reaches should be treated as watercourses, and that the OHW would be the top of the bank of the channel in accordance with our statutory definition.

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A literature search done by our staff found several studies that indicated that the top of the bank of most watercourses would correlate to a 1.5 to 2 year flood level. Thanks to the recent Corps of Engineers flood study work on the Mississippi River, accurate discharge estimates are available and HEC 2 and HECRAS flood models can be used to estimate a 2-year flood elevation at any point on the Mississippi River downstream of the Twin Cities. Therefore, for the past five years or so, we have been using these 2-year flood elevations as an estimate of the OHW (top of bank) for the upper pools of Mississippi in MNDNR Region 3.

The St. Croix is impacted by Mississippi Pool 3, which is created by US Lock and Dam 3 in Red Wing. The elevation we use for the Mississippi for OHW estimates at the confluence of the St. Croix is 679.52 using the 2-year flood elevation. This elevation also correlates with field investigations by our state survey crew who examined tree evidence using our lake OHW methodology. They found consistent physical evidence between 679 and 682 and even higher in some places. For permits to alter the bed of public waters, the MNDNR now uses 679.5' as an estimate of the OHW for the St. Croix south of Stillwater, and continue to use top of bank north of Stillwater.

We could make an on-site determination of the OHW on a case-by-case basis, which is very time consuming and would then require surveying in the mark. Instead, we have decided to rely on an OHW elevation estimate that is based on hydrology/hydraulics modeling and physical evidence. Minnesota believes that the elevations that have been developed over the last 10 years represent an accurate estimate of OHW based on our statutory definitions for these river systems and we are using them with confidence. The application of the location of the OHW for setback purposes is a separate issue that has always been handled by the local units of government, as they interpret and administer their St. Croix Ordinances. We do not anticipate any changes in this procedure under the current regulations. As always, local units of government may choose to be more restrictive.

Wisconsin is now trying to get away from individual site visit OHW's and may decide to use elevations to be responsive to requests and inquiries. We support this effort, but realize that the determination may not be able to be consistent on both sides of the river due to our different statutory definitions and case law.

If you have any questions, please contact me at 651-772-7915.

Sincerely,

Molly Shodeen
Area Hydrologist

c: MNDNR, Jim Japs, Mel Sinn, Scot Johnson, Dale Homuth Kent Lokkesmoe
WIDNR, Eunice Poste, Bob Baczynski

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

Operations
Regulatory Branch

Mr. B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison, Wisconsin 53707

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Thank you for the opportunity to comment at this proposal.

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Madison, Wisconsin 53707

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In reviewing federal and state OHWM determinations on the St. Croix River, it has been our experience that, in some circumstances, the Corps has determined an OHWM that is different than the OHWM established under Wisconsin law. Therefore, we believe that it is important that both the WDNR and the general public be aware of the potential jurisdictional differences between our respective state and federal regulatory programs.

As a matter of general information, the U.S. Army Corps of Engineers regulates dredging, the construction of structures, other work, and discharges of dredged or fill material in the St. Croix River under the authority of the Rivers & Harbors Act of 1899 and section 404 of the Clean Water Act. The Corps' regulations define the term Ordinary High Water Mark under those two laws as follows:

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I believe that it would be helpful to the general public if WDNR's OHWM determination included a notation clarifying that it is applicable only to the state's regulatory programs and that the Corps should also be contacted regarding its federal permitting requirements.

Thank you for the opportunity to comment at this proposal.

Sincerely,

Robert J. Whiting
Chief, Regulatory Branch

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

Operations
Regulatory Branch

Mr. B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison, Wisconsin 53707

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Sincerely,

Robert J. Whiting
Chief, Regulatory Branch

Post, Eunice A.

From: Baczynski, Robert J.
Sent: Friday, August 26, 2005 8:08 AM
To: 'jsieben@minn.net'
Cc: Baumann, Daniel G.; Post, Eunice A.
Subject: RE: Lake ST Croix OHWM release

Mr. Sieben,
The entire file will not be available electronically, but will be available the old fashioned way, paper. If you would like to arrange a time to view the file, you will have to contact Eunice Post (715) 684-2914 x119. Thank you for your interest in this important issue.

-----Original Message-----
From: James J. Sieben [mailto:jsieben@minn.net]
Sent: Thursday, August 25, 2005 6:42 PM
To: Baczynski, Robert J.
Subject: RE: Lake ST Croix OHWM release

Mr. Baczynski: When will and electronic version of the Findings be available? Please advise. Thank you. jjs (763.852.0443)

-----Original Message-----
From: Baczynski, Robert J. [mailto:Robert.Baczynski@dnr.state.wi.us]
Sent: Thursday, August 25, 2005 11:22 AM
To: Baczynski, Robert J.; Felicia White; djarvis@aftonhouseinn.com; jarnason@andersencorp.com; ArcolaMill@aol.com; cardwellco@aol.com; dennisl100@aol.com; Salmoogy@aol.com; Scvalleyviewshed@aol.com; shelton361@aol.com; rnosnhoj@attbi.com; jkwarren@bitstream.net; jim@carpenternaturecenter.org; dpoints@centurytel.net; mike.willis@centurytel.net; pkytola@centurytel.net; tophera@centurytel.net; vc7larry@centurytel.net; ddarnold@ci.hudson.wi.us; jarunke@co.chisago.mn.us; mdschmi@co.chisago.mn.us; odonnell@co.washington.mn.us; haynerca@comcast.net; lscb@comcast.net; peterson.vicki@comcast.net; spdjjohnson@comcast.net; caneday@cornernet.com; rwbrooksbank@cs.com; daniel.johnson@dbjlaw.com; dinesen@direcway.com; Dale Homuth; Ken Holman; Molly Shodeen; Rebecca Wooden; Russ Schultz; Baumann, Daniel G.; Harrington, Dan; Hausman, David; Post, Eunice A.; Paddock, John F.; Humrickhouse, Scott A.; prichard.mike@dorseylaw.com; ayelink@earthlink.net; jrgunther39@earthlink.net; mbpatrick@earthlink.net; cwnelson@frontiernet.net; josephmriley@hotmail.com; tomstcroixriver@hotmail.com; Sandra.Whalen@house.mn; jacobsonn@mac.com; jonesd2@mac.com; jsieben@minn.net; markh.smith@mmm.com; scdelapp@mmm.com; carlsons@mninter.net; bruce@mnpba.com; LLReynolds82@msn.com; peggynolz@msn.com; RPROLLE@msn.com; towolf@msn.com; larrykennedy@mymailstation.com; Brian_R_Adams@nps.gov; Kate_Hanson@nps.gov; Tom_Bradley@nps.gov; jcuchna@parksandtrails.org; damondunn@pressenter.com; dgavin@pressenter.com; fogden@pressenter.com; lauing@pressenter.com; mytmsrivr@pressenter.com; nhvill@pressenter.com; dbeaudet@pro-ns.net; gusclapp@qwest.net; jrstanton@qwest.net; shiltgen@repgroupinc.com; joe@rodlibeskar.com; riverway@rowen.org; wberndt@sbcglobal.net; weinberg@skypoint.com; cwatt@spacestar.net; bill.dunn@state.mn.us; jon@stcroixmarina.com; rrmeierotto@stthomas.edu; bellairs@trancer.com; dawald@usfamily.net; g.agrimson@usfamily.net; oakwood@usfamily.net; utecht@usfamily.net; umwa@uswest.net; manelson@vbe.com; Goodman, Lisa; lspirate@yahoo.com
Subject: Lake ST Croix OHWM release
Importance: High

Hello Everyone, Attached you will find a news release you may find helpful for next weeks meeting in Hudson. Hope to see you at the meeting on Wednesday, August 31 at 6pm in the Community Room of the Government Center.

<<St Croix OHWM Release 8-25-05.doc>>

Post, Eunice A.

From: Seemon, Daniel J MVP [daniel.j.seemon@mvp02.usace.army.mil]

Sent: Monday, August 22, 2005 9:14 AM

To: Post, Eunice A.

Cc: Whiting, Robert J MVP; Valencia, Maria T MVP; Smith, Tim J MVP

Eunice,

This a formal request to speak on behalf of the U.S. Army Corps of Engineers at the WDNR Public Hearing scheduled for August 31, 2005, at the St. Croix County Government Center. The discussion will center around the WDNR Ordinary High Water Mark (OHWM) as it pertains to the St. Croix River. The Corps will present it's determination on our OHWM in the St. Croix River, as it relates to Section 10 of the Rivers & Harbors Act and Section 404 of the Clean Water Act.

We appreciate the opportunity to comment on this topic.

Sincerely,

Dan Seemon
Ecologist
Regulatory Branch
U.S. Army Corps of Engineers
190 East Fifth Street
St. Paul, Minnesota 55101-1638
(office) 651-290-5380
(fax) 651-290-5330
(cell) 612-770-6445
(e-mail) daniel.j.seemon@usace.army.mil

Post, Eunice A.

From: Seemon, Daniel J MVP [daniel.j.seemon@mvp02.usace.army.mil]
Sent: Wednesday, May 11, 2005 8:01 AM
To: Post, Eunice A.
Subject: RE: Lower St Croix Ordinary High water mark evaluation

Eunice,

I'm up to my ears in stuff here. I can't make the meetings. However, Please inform Mr. Rollie and others that your determination id WIDNR "only". The Corps will evaluate the OHWM on the St. Croix River on a case by case basis. In other words, will will not change our OHWM to meet the needs of WIDNR or private property owners.

Thanks,

Me

-----Original Message-----
From: Post, Eunice A. [mailto:Eunice.Post@dnr.state.wi.us]
Sent: Tuesday, May 10, 2005 1:00 PM
To: molly.shodeen@dnr.state.mn.us; Brian_R_Adams@nps.gov; Randy_Ferrin@nps.gov; Jim Kleinhans (E-mail); Emily Lund; Jennifer Shillcox; Robert Bezek; Seemon, Daniel J MVP; Jayne Brand; gseipel@pressenter.com; Liz Moline; apichotta@co.pierce.wi.us; Konkel, Deb J.; Breese, Gregory D; Baumann, Daniel G.; village@somtel.net; Lepak, Gary T.
Subject: Lower St Croix Ordinary High water mark evaluation

Hi everyone,

As some of you may remember, and to update others, the DNR is in the process of evaluating the location of the ordinary high water mark (ohwm) of the Lower St Croix River. In August and September, 2004, we evaluated the area near the Lake Mallalieu dam and Kinnickinnic State Park.

We then held public meetings in Prescott and Hudson about what we observed at these two sites.

This year, we will be doing the field work for this evaluation in three locations. On May 17, 2005, we will meet at the Prescott Public beach at 9:30 am; on May 18, we will meet at Mr. Bob Rolle's property at 9:30 am, and on May 19 we will meet at the Twin Springs boat landing at 9:30 am.

I am hoping that everyone's schedule will allow them to participate in the evaluation. We will be observing and inventorying at soils, vegetation and other physical indicators at each site.

As we did last year, the Partnership team and the public will also be invited to participate.

If anyone has questions, needs directions, or whatever, please just let me know.

Looking forward to seeing all of you next week!

Eunice

Post, Eunice A.

From: Breese, Gregory D
Sent: Monday, August 08, 2005 11:20 AM
To: Baczynski, Robert J.; Humrickhouse, Scott A.; Baumann, Daniel G.; Lepak, Gary T.; Post, Eunice A.
Subject: RE: Ordinary High Water Mark Study questions, requests and concerns

After reading this I would suggest we get a call together very soon so we can meet our obligations. There are many questions raised that we should discuss.

I am available almost anytime this week.

-----Original Message-----
From: Baczynski, Robert J.
Sent: Monday, August 08, 2005 8:42 AM
To: Breese, Gregory D; Humrickhouse, Scott A.; Baumann, Daniel G.; Lepak, Gary T.; Post, Eunice A.
Subject: FW: Ordinary High Water Mark Study questions, requests and concerns

I received this today.

-----Original Message-----
From: Bill Tilton [mailto:billtilton@juno.com]
Sent: Monday, August 08, 2005 2:13 AM
To: Baczynski, Robert J.
Cc: billtilton@juno.com; grdunn@juno.com; klmoreno@hotmail.com; Bill.Dunn@state.mn.us; bruce@mnpba.com; audrey.ferrozzo@comcast.net; bruce@brucelenzenhomes.com; glindebe@pressenter.com; Joseph.H.Mose@mvp02.usace.army.mil; Marsha.G.Mose@mvp02.usace.army.mil; lynnallen@edinarealty.com; jeff_cudd@gmitravel.com
Subject: Ordinary High Water Mark Study questions, requests and concerns

To Be Send via email to Robert.Baczynski@dnr.state.wi.us
Dear Mr. Baczynski,
Please forward copies of this email message to Mr. Breese, Mr. Sommerhaus, Mr. Bauman, Mr. Lepak, Ms. Post and any other Wisc. DNR employee or citizen with an interest in these subjects. I want these comments and facts to be part of the record prior to the anticipated August 31, 2005 Declaratory Ruling on the OHWM for Lake St. Croix.
As you know, I am a property owner on Lake St. Croix. My property, including over 400 feet of shoreline, is about three miles south of the I94 bridge at Hudson. Please add my name, office mail address and email address to DNR distribution lists for any OHWM matters and for any other matters involving the St. Croix River, Lake St. Croix, Floodplane issues, Shoreline issues or Wild and Scenic River matters. I thought I was supposed to have been added to such lists in the past, but it seems several such notices have gone out to others, but not to me.
As you promised you could do during the Hudson meeting on July 27, 2005, please send to me copies of the slides used at that presentation of "data" the DNR has gathered regarding setting of an Ordinary High Water Mark (OHWM) for Lake St. Croix and particularly for my property on that lake. If the material is available electronically you can send it to me via email at this address. Or you can send it to my office, address below.
Is there a tape or memo or DNR memo or other record of the July 27 meeting? If so, I request copies of all such items.
I would also appreciate copies of all other data, photos and other information which have been gathered by the DNR and which may be relevant to the DNR's decision regarding the OHWM for my property in particular and for the greater Lake St. Croix area in general. I will pay any copying costs incurred. I thought I'd see a least a listing of such information at the July 27 meeting; but nothing of the kind was

presented.
This request and all other requests in this letter for information, data or documents should be considered pursuant to your team's promises of disclosure made to the many citizens present at the July 27 Hudson meeting and pursuant to any state and federal laws permitting access by citizens to information in the possession of the DNR.
I have developed some very serious concerns as to the accuracy, impartiality and completeness of the data being sought and of the conclusions to be reached by the DNR Team looking into the OHWM for Lake St. Croix, particularly for my own property.
Along that line, and for reasons that will be more clear upon a reading of this letter, I formally re-request that the Wisc. DNR make an OHWM determination specifically for my property on Lake St. Croix and that you do so as part of your present ongoing study, i.e. do it before the Aug. 31 release of a Declaratory Ruling on the issue. As your DNR records will indicate, I have been requesting an OHWM determination for my property since 1999. My 400+ feet of shoreline are mostly undisturbed by human hands and in other ways I have a far superior site than several of the sites chosen by the DNR to look at for this OHWM study. Last year the DNR received a volume of data including several expert reports and OHWM determinations for my property. The DNR has promised that an OHWM determination for my property would be done finally as part of the DNR's present study. Therefore I was a bit when I came to the July 27 meeting to discover that the DNR's public report of data collection so far did not include any of the data received by the DNR relative to my property.
Related to that subject, I want to lodge a protest against the failure of the July 27, 2005 meeting to fulfill its promised purpose of presenting preliminary "findings". See the Aug 18, 2004 letter of Daniel Bauman which described this session as intended to
develop field report identifying OHWM findings, share with partners, compare to historical elevations and data gathered from the public.
But there was not any "field report identifying OHWM finding" presented at the July 27, 2005 meeting. The DNR people present affirmatively refused to make any stab at what thoughts they had regarding any OHWM finding. Since there was no "finding" info, there obviously was not any attempt made at the meeting to "compare [those findings] to historical elevations," as had been promised at the beginning of the 'study.'.
Similarly, the July 27 presentation totally omitted any of the promised "data gathered from the public," including the extensive data for my own property. A couple dozen citizens, including several people with valuable expertise, came to the meeting to talk turkey with government workers about what data was available and what conclusions or 'finding' you were tending toward. Instead we were told there that the DNR didn't want to talk about any particular OHWM elevations that night; there would be no finding till Aug 31, by which time a Declaratory Ruling would be made. Public input was discouraged at the very meeting which seemed to be specifically designed as an opportunity for public input before the DNR made another bad OHWM determination.
Additionally, at the July 27 meeting it was not clear what criteria the DNR is using to make its OHWM determination. Mention was made of Chapter 40 of the Waterway and Wetland Handbook for the State of Wisconsin, entitled "Ordinary High Water Mark" . But mention was also made of something called "the Browse Line," whatever that is, "drift lines" and "erosion lines" without any explanation of what implications those vaguely defined issues had on the DNR's OHWM determination.
IMPORTANT DATA WHICH APPEARS TO BE IGNORED BY THE DNR TEAM LOOKING AT THE OHWM FOR LAKE ST. CROIX
From the July 27, 2005 meeting I understand that your team investigating the OHWM for Lake St. Croix is not taking into consideration the OHWM determination now in existence for the Minnesota shore of Lake St. Croix, nor any of the factual information upon which that Minnesota shore OHWM is based. I request all information, if any, which your team or other Wisc. DNR personnel have collected from the Minnesota DNR or other sources in Minnesota which may be relevant to this OHWM. If you (i.e. your team or other WI DNR sources) have not collected any information from any Minnesota sources, I request that you state so in your response to this letter. For what it's worth, assuming no Minnesota-sourced data

has been collected as stated at the July 27 meeting, I would also be curious as to why your team would choose purposely to ignore a potential wealth of information regarding the OHWM issue which you imply you are investigating thoroughly.

I also inferred at the July 27 meeting that your team had not yet investigated nor considered the OHWM determination made over the years by the City of Hudson. Is that true and, if so, why not? If you have not collected any information from the City of Hudson or from the experts upon which the city has relied upon in the past, please, state so in your response to this letter.

I was very surprised to learn at the July 27 presentation that you had not yet taken an opportunity to look at the detailed OHWM analysis of my own Lake St. Croix property done by Barr Engineering, Ogden Engineering and other experts (at some considerable expense to me) and which provides detailed and overwhelming evidence that the OHWM at my property is between 676 and 677 feet above sea level. Because the DNR ignored my five years of requests that the DNR do it, at my own expense I hired the best experts available to gather relevant data for an OHWM determination at my property.

For example, I had a team of surveyors & others do a survey of my property. As part of that Louis Filkins and his associates at Ogden Engineering (a long-established and very well-respected local expert resource) did an investigation and made an OHWM determination, which has been provided to you but apparently ignored. As part of the data gathering, I had that team do a survey which shows the location, diameter, elevation and type of every tree on my property (over 4" in diameter) within 200 feet of their professionally-determined OHWM. You have been provided with that map/survey for my 400+ feet of shoreline. It shows over three dozen such trees waterward of the DNR-enforced OHWM of 682' (and over half a dozen of those waterward trees were between 3' thick and 5'5" thick). It appears no such woody vegetation survey has been done at any of the five DNR-chosen sites; but for some reason it seems that this unique survey-of-trees data provided by me to the DNR has so far been totally ignored.

In addition, I hired Barr Engineering, a long-established national firm with 40+ years of experience in analyzing such matters, including extensive work for the Army Corps of Engineers and National Park Service, including projects involving the St. Croix. Barr Engineering specifically referred to Chapter 40 criteria for the OHWM. The Barr report specifically addressed physical indicators such as soil, water staining, mud stains, ice scars and erosion lines.

In addition, Barr addressed biological indicators mentioned in Chapter 40. For example, it investigated mosses and trees along my shoreline. It so happens that moss is the very first-listed "Indicator" in the DNR Handbook Chapter 40 section entitled "What to look for when making an OHWM Determination." So Barr Engineering did a moss survey on my property. Barr's data and finding based on its moss survey is as follows:

. . . Chapter 40 mentions several biological indicators of the OHWM. There were several of these apparent on your property. Specifically, there were mosses and trees abundant along your shoreline. According to Chapter 40, "...mosses which are located on exposed rocks, stumps, tree roots, etc., are usually considered terrestrial and the lowermost elevation of these mosses is a good indicator of the OHWM." We surveyed this transition from moss to no-moss at four locations on your property, designated on the attached survey map as "OHW-1," "OHW-3,"OHW-4," and "OHW-5." The elevations of these locations, which were up to 325 feet apart, were within 1.8 feet in elevation of each other . All of these moss/no-moss elevations were between 676.0 and 677.8 above sea level, with an average elevation of 677.0.

I also presented photos from a helicopter flyover of my property, showing an obvious natural division between the aquatic vegetation in the water and the terrestrial vegetation on the shore. An ordinary person would describe this as barren sand and rock, i.e. -- a beach. This 8+ foot wide area is sort of a "no-man's land" for both terrestrial or aquatic vegetation. If you read the 1914 Diana Shooting Club v. Husting 156 Wisc. 261, 272 and the "reasonable person" test noted in the DNR handbook, one would think that a glance at the flyover photo would indicate that the

OHWM must be somewhere on that barren beach separating the woody vegetation (i.e. the forest) from the water. It is in that area, based on fine tuning from moss and tree roots, that one reaches the OHWM of between 676.0 and 677.0 for my property.

This data and much more was presented to St. Croix County and the DNR in October or November, 2004. I note that on Dec. 15, 2004 Gary Lepak and Eunice Post provided the DNR's comments to the county regarding my application, so by then the DNR was clearly aware of (or should have been aware of -- see Ms. Post's comments, below) the several expert opinions I had obtained on the OHWM issue. It seems clear that no such detailed analysis of OHWM issues had previously been done by or given to the DNR (and presumably this was clear to Mr. Lepak and Ms. Post, since they both had told me in the past that they could not describe to me the facts used to support the 682 enforcement level; every now and then someone talks vaguely of a Dan Koich having determined an OHWM of 682' as part of a Marzoff application years and years ago, but no one has ever provided any data supporting that number; certainly none was mentioned at the public meeting on July 27, 2005; if you talk to Buzz or Mary Marzoff they will tell you that the OHWM "investigation" by Mr. Koich was done totally arbitrarily).

In his Dec. 15, 2004 memo commenting on my Application for Land Use Permit, Mr. Lepak is silent on the OHWM issue altogether (he has at other times stated that's not his issue, that he's not expert in that area, tho I found a memo from him from 1983 where he confidently states the OHWM is 688 feet! Finally in a 1999 memo Mr. Lepak admits "This [the long-enforced 688 OHWM level] needs to be verified", i.e. it's wrong; then he simply summarily changes the DNR's OHWM, but in a very tentative way: "the OHWM which I believe to be at 682 feet," [italics added] and Mr. Lepak cites no evidence to support it.). Interestingly, to the extent Mr. Lepak looked at my 2004 data he found it convincing -- i.e. he accepted the conclusion by Barr Engineering on the more-complicated Floodway/Floodfringe Boundary issue.

Ms. Post had the DNR job of advising the county on the OHWM issues in my Application, and in doing so she simply ignored the data and expert conclusions altogether. In her Dec. 15, 2004 comments Ms. Post simply summarily said "The ordinary high water mark at the Tilton property is 682 1912 Corps adjusted elevation datum." The county was looking to Ms. Post for guidance on the OHWM issue and in so doing Ms. Post misled the county. There are no signs that she even read the Barr Engineering or Ogden Engineering data or looked at the photos or surveys; if so she makes no explanation for why her 682 declaration is contradicted by all available evidence. Are you aware that Ms. Post was on my property in November 2004, while the stakes placed by the Filkins/Ogden and Barr experts were still in place? I asked her to walk to those stakes and see for herself what the other experts were looking to. She summarily refused to do this simplest of investigations, despite my direct request that she do so as part of the DNR's OHWM study and despite that she was just down the beach from the data.

Given this history and more, this raises questions about the qualifications and/or objectivity of some of the DNR people doing this study and questions about the care with which data is being gathered and analyzed.

From these experiences, from my review of historical documents (see e.g. the Lindeberg and Marzoff files) and from my personal encounters with certain DNR personnel on this issue I get the impression that there is a distinct prejudice within the DNR to ignore any evidence which would support an OHWM level akin to that already determined by the State of Minnesota, the City of Hudson, Barr Engineering, Ogden Engineering and others. Rather it seems that the DNR wants to make an OHWM Determination as high above sea level as possible in order to maximize its own police power and restrict property rights as much as possible.

The fact that three of the five official sites looked at by your OHWM team (the Rolle property, Twin Springs and the Kinnickinnic area) were all 'investigated' by your team during a week in mid-May 2005 when the river was higher than what the OHWM logically is (e.g. woody vegetation was sticking out of the water; moss was clearly under water at the time of your team's visit) makes me wonder how you can relay on most of the

data you have collected.
The DNR collectors of data said that their process of gathering data is to start at the water line and go up hill to (or toward) the bluff. So they inherently cannot gather data supporting a OHWM level lower than what the water was on the day of the data gathering. Why not do this during the dry season? When the water is at the low pool elevation of about 675 feet (like now), start at the low pool elevation and work your way toward the bluff. Do it in the next week or two on my property, if you do not trust the Barr or Ogden or other info for some reason. You'll get different, more relevant and more reliable data than you did when your team "investigated" at three of your sites in May of this year.
As I said toward the beginning of this letter, I have developed some very serious concerns as to the accuracy, impartiality and completeness of the data being sought and of the conclusions to be reached by the DNR Team looking into the OHWM for Lake St. Croix, particularly for my own property. I will be cc'ing this email to several other citizens who I believe may be interested in the fairness and accuracy of the OHWM Declaratory Ruling which is to be issued August 31, 2005. I know there are many more citizens who have an interest in this subject who are not on this cc list; this is because I simply do not have their addresses on this computer. I encourage people receiving this email to forward it to others who may have an interest.
I will appreciate your courtesy in responding to the questions raised and in taking the actions requested in this letter. I am happy to discuss or meet regarding these issues. For phone calls, please first try my office at 651-224-7687 [best place to leave phone messages].
Respectfully,
Bill Tilton
278 Westgrove Road
Hudson, WI 54016
Please send U.S. Mail to my office:
c/o Tilton & Dunn, PLLP
101 East 5th Street
#2220
St. Paul, MN 55101

Post, Eunice A.

From: Humrickhouse, Scott A.
Sent: Tuesday, July 26, 2005 2:29 PM
To: Baumann, Daniel G.; Baczynski, Robert J.; Post, Eunice A.
Subject: FW: WI DNR Proposal

-----Original Message-----
From: Brian Crist [mailto:bcrist@artsmia.org]
Sent: Tuesday, July 26, 2005 2:22 PM
To: Humrickhouse, Scott A.
Subject: WI DNR Proposal

Subject: ORDINARY HIGH WATER MARK

As a homeowner living on the St. Croix River at 527 Lake Street, Prescott, WI 54021 it is my strong belief that the Ordinary High Water Mark should be at the waters edge at 675 mean sea level for measurement of setback purposes. This would be consistent with the recent partial relaxation in NR 118 Rules and Regulations governing non-conforming homeowners, consistent with State of MN rules and regulations, and would in no way compromise the preservation and protection of the St. Croix Riverway.

Regards,

Brian Crist
715-262-3351

Post, Eunice A.

From: Humrickhouse, Scott A.
Sent: Tuesday, July 26, 2005 6:20 AM
To: Baumann, Daniel G.; Baczynski, Robert J.; Post, Eunice A.
Subject: FW: Ordinary High Water Mark

-----Original Message-----
From: Burt Ewing [mailto:burt-ewing@comcast.net]
Sent: Monday, July 25, 2005 11:03 PM
To: Humrickhouse, Scott A.
Cc: Sen.Harsdorf; Mike Ewing; Shannon Mayer; Mike Mayer; Rep.Rhoades
Subject: Ordinary High Water Mark

My brother John asked me to e-mail you this letter concerning the current WI DNR process that seeks to change the definition of the Ordinary High Water Mark for the portion of the St. Croix River (a few miles north of Prescott) where he and his wife Linda have their cabin.

To: Scott Humrickhouse, Regional Director, West Central Region, Wisconsin Department of Natural Resources

Cc: Senator Sheila Harsdorf, Representative Kitty Rhoades

From: John and Linda Ewing, 1100 Golden Oaks Drive, Hudson, WI 54016-6700
(715-386-5722)

Dear Sir:

The current WI DNR process to change the St. Croix River OHWM affects the point at which set back is measured and this will negatively impact not only my river property, but many others as well. It seems that the NR118 revision that was passed in late 2004 should have and would have shown consistency with the MN DNR figure of 675 feet above sea level. However, the WI DNR seems intent on making this very simple issue very confusing. The St. Croix River levels are within a foot or so of the 675 foot figure for 9-10 months of the year, so why are the extremes of high and low water levels even considered with respect to what is "ordinary"?

We are very much against the passage of any changes to the WI definition of OHWM between Prescott and Hudson that would set it to any figure other than the 675 foot level that is used by the MN DNR. While clearly defining the OHWM may help WI DNR representatives and property owners conduct civil conversations about setback issues, it seems clear that having significantly different definitions of OHWM on the two banks of the same river will lead to much contentious struggle and litigation for the WI DNR. Simple common sense advises that the two sides of the river should use the same standards. Please reconsider your current initiative!

Post, Eunice A.

From: Humrickhouse, Scott A.
Sent: Tuesday, July 26, 2005 11:04 AM
To: Baumann, Daniel G.; Baczynski, Robert J.; Post, Eunice A.
Subject: FW: OHWM
Attachments: Stone House Letter.doc

-----Original Message-----
From: Louann Nicolai [mailto:lnicolai@chadco.com]
Sent: Tuesday, July 26, 2005 10:52 AM
To: Humrickhouse, Scott A.; Sen.Harsdorf; re.rhoades@legis.state.wi.us
Subject: OHWM

Post, Eunice A.

From: Humrickhouse, Scott A.
Sent: Wednesday, August 03, 2005 7:04 AM
To: Baumann, Daniel G.; Post, Eunice A.; Baczynski, Robert J.
Subject: FW: Lake St Croix proposed OHWM

-----Original Message-----
From: carl.mellum@comcast.net [mailto:carl.mellum@comcast.net]
Sent: Tuesday, August 02, 2005 6:08 PM
To: Humrickhouse, Scott A.
Cc: Sen.Harsdorf; Rep.Rhoades
Subject: Lake St Croix proposed OHWM

Dear Mr. Humrickhouse,

My understanding is the Wisconsin DNR is proposing to drastically raise the Lake St Croix "ordinary high water" marks used for various private and public issues.

Please adopt the "waters edge at 675" to be used by the WIDNR in all further high water mark issues. If you must adopt new levels please use evidence from scientific engineering studies that indicate only two feet difference in the "ordinary" (which means .common, usual, average, common place) from the 675 feet mark to 677 feet.

Thank you for your attention.

My address is on Lake St Croix.

Carl Mellum
MP 720th street
W12775 720th ave.
River Falls, WI

From: River City Agency [mailto:rivercityagency@earthlink.net]
Sent: Thursday, July 28, 2005 12:48 PM
To: Herrick, Wayne; Scott
Subject: OHWM on the St Croix River

This is in support of using 675 feet mean sea level for the "Ordinary High Water Mark", for the Lake St Croix area. of the St Croix River.I am a riparian land owner on that part of the River and also have participated in over 60 Meetings for the review of the Scenic River Ordinance. Juergen M.Weidling

120B Black Bass Road
River Falls, WI 54022
715-425-7696

Post, Eunice A.

From: Humrickhouse, Scott A.
Sent: Wednesday, August 10, 2005 9:52 AM
To: Baczynski, Robert J.; Breese, Gregory D; Post, Eunice A.; Baumann, Daniel G.; Kavanaugh, Edwina C
Subject: FW: OHWM

FYI

-----Original Message-----
From: cjbraunreiter1@mmm.com [mailto:cjbraunreiter1@mmm.com]
Sent: Tuesday, August 09, 2005 11:44 AM
To: Humrickhouse, Scott A.
Subject: Fw: OHWM

----- Forwarded by Carl J. Braunreiter/US-Corporate/3M/US on 08/09/2005 11:43 AM -----

Carl J. Braunreiter/US-Corporate/3M/US
08/09/2005 11:08 AM

To: scott.hummrickhouse@dnr.state.wi.us
cc: sen.harsdorf@legis.state.wi.us
reprhoades@legis.state.wi.us
fogden@pressenter.com
cjbraunreiter@cbburnet.com
Subject: OHWM

I would like to comment on the OHWM discussions being held for the lower St. Croix river.
The informational meetings presented data that clearly showed the measurement system by which this elevation is determined is very seriously flawed as experts within the Wisconsin DNR as well as in private industry cannot agree what the elevation is; even on the same sight using the same measurement criteria. If we used this inaccurate of measurement system to determine the speed of an automobile, it would be possible for a car with a speedometer reading of 60mph to actually be going anywhere between 40 and 80 mph. This would obviously be an unacceptable measurement system and would be abandoned with due haste as it would cause severe damage to many people. The same should be done with the OHWM measurement system, because it is not a reproducible measurement. It varies by the person making the measurement, the location and interpretation of the data. The determination using this measurement system is arbitrary and can cause sever damage to many individuals.
I also resented the comment made by the DNR in these hearing that they represent the public trust and that those of us who attended the meetings were the "privates". We are the public and we vote for public officials to represent us. You are not elected and do not represent the public. You are hired technical people to do a job and by our democratic process must accept the input taken from the public at public hearings or should be terminated for undermining our democratic process that our constitution requires that we live by in this country. If you want to validate your

claim that you represent the public, please run for office and place your name on the ballot.
I recommend the 675 ft mean sea level -1912 datum be the basis for measuring all setbacks. This is a readily measurable data point that all can agree to using standard engineering principals.

July 26, 2005

Scott Humrickhouse, Reg.Dir
Scott.humrickhouse@dnr.state.wi.us

Sen. Sheila Harsdorf
Sen.harsdorf@legis.state.wi.us

Rep. Kitty Rhoades
Rep.rhoades@legis.state.wi.us

To Whom It May Concern:

We Jay and Gloria Chadima, at 12771 735th Street, River Falls, WI, strong support OWHM on Lake St. Croix being set at 675 feet – MSL – 1912 DATUM for setback measurement.

Sincerely,

Jay and Gloria Chadima

FACSIMILE CORRESPONDENCE

TO: Eunice Post
WI DNR Baldwin Service Ctr.
FAX: 715-684-5940

FROM: SCVIG
1241 Quinlan Ave. So.
Lake St. Croix beach MN 55043
Phone/FAX: 651-436-3390
E-mail: carlsons@mininter.net

SUBJECT: OHWM study and determination

DATE: August 29, 2005

Eunice,

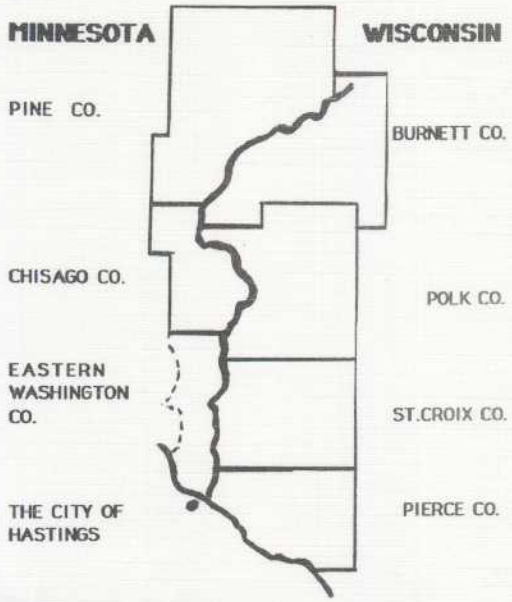
The following is a copy of the Sierra Club's comments on the OHWM issue.
Other information:

- The St. Croix River Association intends to request a hearing on the Sienna Corp development.
- The address name for Sierra Club copies could be SCVIG, for St. Croix Valley Interstate Group.
- The Sierra Club and St. Croix River Association, and likely the St. Croix Scenic Coalition, will take a look at Troy Twp's riverway ordinance and dodges and may bring it up as a Partnership Team issue.

Best Regards,

Ron

SIERRA CLUB/S
ST. CROIX VALLEY INTERSTATE GROUP



1241 Quinlan Ave. So.
Lake St. Croix Beach MN 55043

August 26, 2005

B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison WI 53707

ORDINARY HIGH WATER MARK, LAKE ST. CROIX

The Sierra Club supports the Department's determination of 681.5 ft. as the Ordinary High Water Mark on Lake St. Croix. We acknowledge the need for an objective standard, as the previous practice of relying on the qualitative definition was sometimes confusing, subjective and unpredictable. The standard you are adopting will facilitate even-handed administration of Riverway water setback rules and give riparian landowners a clear understanding of requirements.

The St. Croix Valley Interstate Group of the Sierra Club has roughly 1200 members, a large proportion residing in the region defined by Lake St. Croix. We are committed to conservation in the valley and to preserving the unique values of the Lower St. Croix National Scenic Riverway for enjoyment by our own and future generations.

Scenic Lake St. Croix, a dominant feature of the Riverway, is seriously threatened by land development driven by proximity to the Minneapolis/St. Paul metro area. It is critically important to maintain effective controls on development, and the OHWM, as the principal factor affecting water setbacks, is a key to preserving scenic and environmental values. It would be contrary to the public interest and inconsistent with the intent of Wisconsin's Wild and Scenic Rivers Act to liberalize that control by adopting an OHWM that effectively allows structures closer to the water than current rules permit.

Proponents of revisiting the OHWM allege concern about a confusing definition and inconsistency with Minnesota policy. They promote adopting the 675 ft. Minnesota standard, which would allow significantly more encroachment toward the water than permitted under current regulatory practice in Wisconsin. This, we believe, is a thinly veiled move to simply reduce water setback limitations and increase the marketability and value of new development and redevelopment at the expense of scenic and environmental preservation. There would, in fact, be no public purpose served by adopting the Minnesota standard or any other arbitrary elevation that reduces structure setback from the water.

There are good reasons to doubt the appropriateness of the 675 ft. standard for Minnesota, let alone Wisconsin. That elevation is the *low* water elevation on Lake St. Croix, determined by Mississippi River dams. It bears no relationship to a *high* water mark, which, as defined by statute, is determined by intermittent levels above 675 ft. Higher water is routine throughout the year, up to 693 ft. during floods, and frequently sustained for weeks after rainfalls at 680-685 ft. There is permanent evidence of the nominal high water mark all along both shores of the lake, as your study has shown.

The issue of inconsistency between states has been cited as undesirable and contrary to the 2002 Cooperative Management Plan. True enough, but consistency by itself is no virtue, and adopting Minnesota's "lowest common denominator" as a standard would be counterproductive. Consistency is a false issue in this case because the Riverway is divided into five unique management zones in both states, each with various dimensional and other standards. Even setback from the OHWM varies between zones, as do certain exceptions to that requirement. There are also topographic factors that make consistency unrealistic. The terrain varies greatly between Wisconsin and Minnesota; high bluffs characterize almost all of the Wisconsin shore, while lower banks and floodplains are common in Minnesota. Finally, the statutory definitions of OHWM differ in the two states. To attempt consistency by adopting the Minnesota standard would be pointless.

The Minnesota standard was determined administratively to facilitate easy land use decisions. It serves both landowners and administrators, but not the public interest, a fact that has not escaped notice in Minnesota. The Department of Natural Resources now plans to correct that dysfunctional expedient and establish an OHWM elevation that is compatible with both the statutory definition and the need to protect the riverway more effectively. Minnesota's new OHWM is likely to be 679.5 ft.

The 681.5 ft. OHWM in Wisconsin will serve the public purpose of Riverway protection by better preserving the scenery and environment of Lake St. Croix. To the extent that the new OHWM may clarify DNR jurisdiction over shoreland terrain, the protection of habitat, wetlands and vegetation will also be improved.

We urge the Department to implement its OHWM determination fully and promptly. The stakes are very high in the struggle between development and protection along the shores of Lake St. Croix, and any damage done by inappropriate land use will be permanent. The Riverway urgently needs all the protection we can give it.

Ron Carlson

Ron Carlson, Conservation Chair
Sierra Club, St. Croix Valley Interstate Group

Copy: WI DNR Baldwin Service Center

Recd 8-22-05
BRD

J. Scott Hiltgen
N 7125 1280 St.
River Falls, WI 54022

8/15/05

Mr. B. Dale Simon
101 S. Webster FH/6
Madison, WI 53707

Dear Mr. Simon,

Since I am going to be unable to attend the Aug 31 meeting in Hudson, regarding the OHWM for lake St. Croix, I would like the following comments to be considered:

1) The OHWM should be consistent with Minnesota at rivers edge @675 feet.
2) The Army Corp at Lock & Dam in Redwing maintains the water to that level, by federal mandate!
3) This proposed determination is so the DNR has exclusive power to regulate out of existence homes that have been in their present locations since prior to the Wild & Scenic Designation.
4) By not being consistent, the DNR creates a hostile environment, by making arbitrary decisions that hurt riparian landowners to the so called benefit of the "public" that is the one that trashes the river, create excessive wakes, high speedboats, loud decibel levels and a total disregard for the land owners, who pay outrageous taxes!

Sincerely,

J. Scott Hiltgen

9/1/05 B. Dale Simon > OHWM Comments

Note Original Date:

Scientific 'Intelligent Design'!

✓Sent 12/10/04

To: dan.baumann@dnr.state.wi.us
From: Paul Montgomery <apintl@pressenter.com>
Subject: 675 MSL
Cc:
Bcc:
X-Attachments:

Dan,

Much earlier our Land Use Advisory was unanimous in recommending WI adopt MN's 'Rivers Edge@675' concept. If keeping 'O.H.W.M.', set it at 675 MSL for WI.

That exact figure is required by the Corps of Engineers to maintain the level of Lake St. Croix @ not less than 675MSL.

This figure has been sanctioned universally and is THE number for WI to endorse for inclusion in DNR doings as reasonable, dependable and identifiable. 675MSL is THE level from which to measure set back.

In Prescott we NEVER AGAIN want to see the 'ever-moving stake dance' as performed by Ms. Eunice Post on the contested Gresser lot. Be the Leader!

I strongly advocate providing Free '675' tattoos for St. Croix landowners!

Paul

Paul Montgomery

P.S. At Mosinee I advocated that if you could not settle on 675 then go to 674!
I'm indelibly back to 675.

--

Paul Montgomery
A&P International
577 Locust Street
Prescott, WI 54021

EIN 41-1436456
Phone: 715-262-5788
Fax: 715-262-3823
http://www.pressenter.com/~apintl

To: B. Dale Simon
From: Paul Montgomery <apintl@centurytel.net>
Subject: Below
Cc:
Bcc: **EauLeader, Frank Ogden, Governor, HastingsStarGazette, HelmerMark, Herald, hudobs, Jack Davis, JayneBrand, JeffD, John Oney, JohnMac, KDWA, KevinHarter, KittyR, LaurelieOH, Lloydm, maryP, Mavis M, Mike Hunter, neildurhman, Pam Bever, Paul Mosby, RaaschMJD, repubeagleRW, RFJournal, sallywest, Scott-LindaHiltgen, scottB, Sczcech, SheilaHarsdorf, St.Paulpaper, TV** Prescott Journal
Attachments:

Letter to Editor

Dale — FYeye

WI-DNR Hearing Follow-up

Dear Editor,

The DNR's petition for ordinary high water mark determination was held 8/31 at Hudson's St. Croix County Government center.

Some hapless 50 souls gathered to witness 'scientific' WI-DNR Public Hearing presenters attempting to establish the 'mark' at 681.5 feet on Lake St. Croix (25 miles of river from above Stillwater to the Prescott bridge). The DNR only would listen to 'scientific'-in-nature public comments; i.e. marks on rocks, trees, roots & moss.

They would not entertain comments about the 675 feet level, a long-standing normal pool height maintained by the Corps of Engineers for safe river navigation. That same level is sanctioned by highly-taxed riparian land owners from Hudson to Prescott.

A number of omniscient warriors from the disbanded Lower St. Croix Land Use advisory Group were on hand to talk reality to the DNR. (This 41-member, blue ribbon, citizen advisory panel was formed by the DNR back in 2000). The group unanimously voted 'waters edge at 675 feet' to be used as the point from which to measure setback. This writer was on the committee.

There was a lot of 'term definition' about interpretation & ramification of 'High Water Mark, normal pool and water's edge. Ultimately: a monumental admission by DNR's B. Dale Simon: "It's up to municipalities to determine their own water's edge for setback!" We hope every river hamlet from Hudson to Prescott jumps on this one and enacts the 675 foot level in Ordinance as 'water's edge' and be forever free from years of DNR arbitrary set-back control over landowner permits and costly litigation.

Citizen presenters poked holes in DNR's rationale and conclusions about some sites used in forming their 'scientific' conclusions and recommended tests on bona fide virgin sites. They asked DNR for more than 30 days to adequately and fairly determine high water mark; more time for written comments and for review of them. We hope the sacred DNR doesn't have their ears pasted on!

We suggested they post all documents presented and comments thereto to a website on the internet viewing. It met on deaf ears as they have 'other ways' to disseminate information. Pay them in Baldwin and pick-up 'yer copies at some copy center. How many will ever waste gas do that???

As of this writing, you have until 4 p.m on 9/30 to submit 'scientific' ordinary high water mark comments. Written comments will have the same weight and effect as oral statements presented at the hearing, they say. Send to B. Dale Simon, 101 S Webster, FH/6, Madison WI 53707. Speak-up now or forever hold your gripes!

Paul Montgomery
Prescott

Paul Montgomery
A&P International
577 Locust Street
Prescott, WI 54021

EIN 41-1436456
Phone: 715-262-5788
Fax: 715-262-3823
http://www.a-p-international.com

To: **MATTed**
From: Paul Montgomery <apintl@centurytel.net>
Subject: Below
Cc:
Bcc:
Attachments:

Prescott Journal Published 8/25/05
+ Herald + Area Publications

Letter to Editor

WI-DNR Meeting

Dear Editor,

The WI-DNR is hosting an important Public Hearing to the High Water Mark on the Lower St. Croix. We urge anyone who owns property on or near the river to attend. The DNR's game is to 'scientifically' proliferate their control over the WI side. Normal pool is 675' as maintained by the US Corps of Engineers. That height also has been chosen by MN-DNR.

WI-DNR will divulge a figure we suspect will be around 8' higher (683'). This means the new Ordinary High Water Mark on the Lower St. Croix will adversely affect riparian homeowners in Pierce & St.Croix Counties (includes Prescott & Hudson).

Setbacks for building permits are determined by a distance measured from the High Water Mark. New construction of highly-taxed St. Croix shoreline homes/additions in WI will be pushed back to infinity. Construction on the riverway will all but cease if the DNR gets by with this senseless litigation.

The meeting is Wednesday, August 31 at 6:00 p.m. in the St. Croix County. Govt. Cntr, 1101 Charmichael Rd, Hudson. Statements & questions will be heard. Written comments have the same weight as oral statements. Send them to: B. Dale Simon, 101 S.Webster, FH/6, Madision WI 53707. Comments must be received by Sept. 30th.

A follow-up letter will be submitted to announce the High Water Mark figure demanded by DNR. The deadline & address for written comments will be repeated.

Paul Montgomery
Prescott, WI

262-5788

Paul Montgomery
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Prescott, WI 54021

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Fax: 715-262-3823
http://www.a-p-international.com

Joe Merchak
210 N. Ilwaco Road
River Falls, WI 54022

September 6, 2005

Byron "Dale" Simon
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

Re: Lake St. Croix OHWM

Dear Mr Simon:

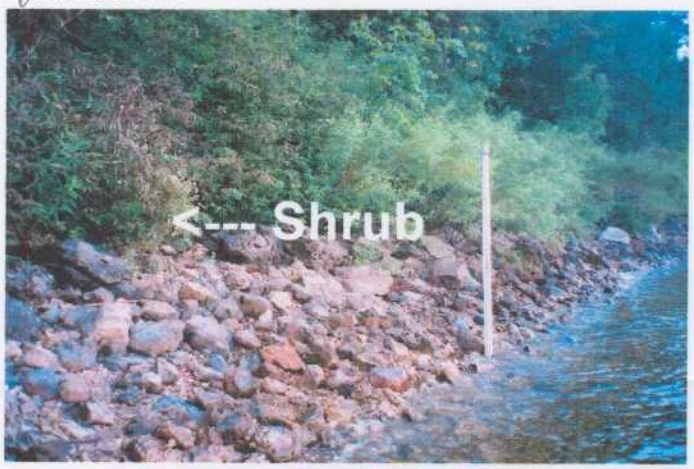
The DNR's proposed 681.5 OHWM elevation should not be based on marks left by floods or other extraordinary events and indicators not relevant in determining the ordinary high water mark. The true ordinary high water mark for portions of Lake St.Croix is at a considerably lower elevation.

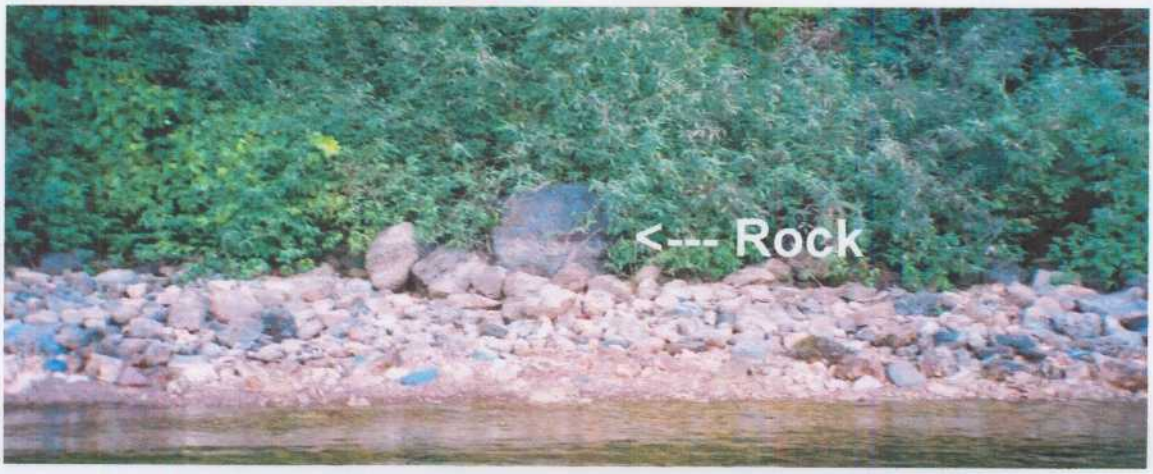
For example, on September 3, 2005, between 8:30 and 10:30 a.m. at my property located at about river mile 9.5, I took three measurements by placing a surveyors rod at the water's edge and using a 6½ foot level with a straight edge. These measurements were made on an undisturbed stretch of shoreline where there is a distinct line of terrestrial vegetation and water marks on erratic boulders:

- Shrub – measured to the top of the stolons on a red-osier dogwood.
- Rock – measured to the distinct water mark on an erratic granite boulder.
- Tree – measured to the top of the highest surface root on an eight inch diameter silver maple tree.

All three items were at 3.3 feet above the river water level. The USGS river gage at Prescott was between 675.34 and 675.36 (1912 MSL) at the time. The photographs below show the items measured.

Respectfully,
J. Merchak
Joe Merchak





TILTON & DUNN, P.L.L.P.

ATTORNEYS AT LAW

2220 US BANK CENTER
101 EAST FIFTH STREET
ST. PAUL, MINNESOTA 55101-1814

(651) 224-7687
FAX (651) 224-0239

WILLIAM LEO TILTON*†
GEORGE R. DUNN**
MICHAEL J. GROSS♦

KENNETH E. TILSEN OF COUNSEL*

*ALSO ADMITTED IN WISCONSIN
**ALSO ADMITTED IN MASSACHUSETTS
†CIVIL TRIAL SPECIALIST, CERTIFIED BY MINNESOTA STATE BAR ASSOCIATION
♦ALSO ADMITTED IN ILLINOIS

September 2, 2005

Dale Simon, DNR
P.O. Box 7921
Madison, WI 53703

Re: Lake St. Croix Ordinary High Water Mark Study

Dear Mr. Simon,

Per your direction at the August 31, 2005 Hudson hearing, I request a complete color copy of all documentary materials gathered by or available to DNR personnel relevant to an Ordinary High Water Mark determination for Lake St. Croix, plus copies of any survey, digital, photographic, computerized or audio materials, including but not limited to all materials gathered by DNR personnel during its study of this issue over the last year or so, all information provided to the DNR by the public and other non-DNR sources, and any information which was available to the DNR previously on this issue.

This request includes copies of all slides used in the DNR's presentation of its work and findings during this study. It also includes a request for any information in the possession of the DNR regarding OHWM indices sought but not found by DNR study personnel. For example, Chapter 40 notes that moss is a terrestrial plant and is an excellent indicator of the high end of the OHWM. Presumably, therefore, DNR study personnel looked for moss at its study sites. But I did not see any findings regarding moss by the DNR people involved in this study. Did they look for moss? How about the other biological and physical indices listed in Chapter 40?

I noted at the August 31 Hudson meeting that DNR study personnel seemed to put great stock in water marks or stains on the shore or on other items in or near the lake. I would appreciate any information available to the DNR indicating how and why any particular stain has relevance to an OHWM on Lake St. Croix, particularly since this lake is also a river and rises and falls with great frequency, unlike a typical lake. Why would stains have any more relevance to an OHWM determination than historical water level data available from the Army COE?

I will pay any copying and transmittal costs relevant to your response to this request, including cost of any delivery via messenger to my office. I request that these materials be provided soon enough so that they can be analyzed in time for fashioning a response to them before your

deadline for submission of citizen comments on this issue.

Please call if you have any questions.

Yours truly,

William Tilton

cc: James Johnson

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

September 14, 2005

Subject: **Extension of Public Comment Period - OHWM St. Croix River**

Dear Interested Parties:

On August 31, 2005, a public hearing was held at the St. Croix County Government Center concerning the determination of the OHWM of the Lower St. Croix River adjacent to Pierce and St. Croix Counties.

During the course of the hearing, several of you requested the department make available all information in the hearing record for you to review. You also requested that the period for submitting additional data related to the location of the OHWM to be considered in the determination for the record be extended beyond the September 30, 2005 date.

Subsequent to the hearing the Department has made available a complete copy of the hearing record that can be viewed at the Pierce and St. Croix County Zoning offices. Copies of the record are also available (for a fee) from the Copycat Digital Printing office located at 209 Second Street, Hudson, WI.

In addition, we will be testing the option of providing records on the web. An electronic version of the record will be available to you via our website at *http://dnr.wi.gov/org/water/fhp/waterway/recordstrial.shtml*. Please visit the site to see when the record is available. It will take us some time to get this information on the website. **As a result, the period for submitting additional information has been extended to November 15, 2005**.

Please submit all written comments to Dale Simon - FH/4, P.O. Box 7921, Madison, WI 53707-7921.

Sincerely,

Dale Simon, Chief Biologist
Rivers and Habitat Protection Section
Bureau of Fisheries Management and Habitat Protection

233 Starr Wood
Hudson, WI 54016
715-386-1161

September 3, 2005

Mr. B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison, WI 53707

Dear Mr. Simon:

Thank you for presiding over the Public Hearing regarding the OHWM at the St. Croix Government Center. After attending the meeting, it is apparent that there are very divergent opinions on whether the OHWM level should be raised.

I have only owned land along the St. Croix since September of 2001 but already I have seen changes in our beach. We have had allot of erosion in that brief period. Sand has been pulled out by the waves and the water is subsequently very shallow far off shore. More tree roots are covering the beach than previously. I do not have data and measurements to back up my statements, just observations. I have also observed the shoreline being pounded by the waves after numerous large watercrafts repeatedly scream past our beach. If the goal is to raise the OHWM so that eventually the level of St. Croix can be raised, this would only decrease enjoyable shoreline. If it is to prevent individuals from building too close to shore, I believe there are already regulations in place. If not, local and state governments can develop such regulations. If it is to encourage more watercraft on the St. Croix, I would argue they have plenty of room to boat and enjoy the river.

My concern is erosion. If you raise the level of the St. Croix, the potential for erosion will be even greater. The increased volume and force of the water will deteriorate the land even farther inland, including woodlands. This fact, coupled with the huge volume of water that large boats displace will only increase the erosion and destroy what we currently enjoy.

I ask you to review the data presented to you again and to question the validity of some of the information and numbers that were presented on PowerPoint at the meeting. The information presented did not appear complete, accurate, and unbiased. It did not present a "rock solid" case to increase the OHWM. I ask you to review more "undisturbed" areas, which obviously had not been done. Perhaps you could also do a survey of the number of watercraft and the speeds at which they travel on the St. Croix. I would ask you also to review data available regarding the impact of watercraft in relation to erosion. Perhaps changes in watercraft travel are more necessary than raising the OHWM to preserve the beauty and sanctity of the St. Croix.

I think there are hidden agendas by several groups who each claim the other has selfish motivations. Let's put all that aside. More water equals increased potential for erosion. The OHWM has been effective since 1912. Why fix something that is not broken. I recommend the current OHWM remain at its current level.

Sincerely,

Deborah H. Dragoon

Copy Cat Digital Imaging Center
209 2nd Street,
River City Center
Hudson WI 54016

Invoice 58679

09/03/05

Barbara
DNR - Baldwin
890 Spruce Street
Baldwin WI 54002

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< Same as Bill To >

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3 copies Coll. ☐ Color 1:1 1:2 B&W 2:2 2:1 On 8½x11 & 11x17 Reduce to 8½x

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#1

WELCOME – Public Hearing regarding the petition of the DNR for a determination of the OHWM of portions of the St Croix River.

RJB, Team Leader, DNR Short intro-how we have gotten to where we are today

* Over the years, staff have made numerous OHWM determinations on this portion of the SX river

Concerned members of the public went on record at the May 26, 2004 Natural Resources Board meeting in Mosinee, WI stating that the ordinary high water mark (OHWM) for Lake St. Croix is not consistent with the State of Minnesota's elevation for measuring setbacks and that the Wisconsin DNR needs to change that.

The following is an excerpt from the Petition for declaratory ruling:

The grounds for this petition are to determine the elevation of the OHWM in and along the portion known as the "state zone" of the St. Croix River, because of the following:

The Department received public comments questioning the accuracy of the elevations of the existing OHWMs in and along the St Croix River, and responded by offering to re-evaluate the elevations of the OHWM in and along the portion of the St. Croix River commonly referred to as the "state zone."

The portion of the St. Croix River known as the "state zone" extends from Prescott, Wisconsin north to approximately the Arcola sandbar, which is slightly more than three miles north of Houlton, Wisconsin.

Currently, the elevations of the OHWM in and along the "state zone" for the St Croix National Wild and Scenic River were determined and are established as:

687 feet mean sea level, 1912 Corps adjusted datum, Section 9, T26N, R20W, in the City of Prescott, Pierce County, Wisconsin

682 feet mean sea level, 1912 Corps adjusted datum, *Marzoff property*, Section 12, T28N, R19W, in the Town of Troy, St Croix County, Wisconsin

685.75 feet mean sea level, 1912 Corps adjusted datum, *Union Pacific Railroad property*, Section 24, T29N, R20W, in the City of Hudson, St Croix County, Wisconsin

The reason for the requested ruling is that the Department has received public comments questioning the accuracy of these existing OHWM elevations and is asking that the ordinary high water mark elevation on the St Croix River be reduced from these currently established elevations to 675 feet mean sea level, 1912 Corps adjusted datum.

The timeline proposed, and actions planned in conducting the OHWM process:

- August 18, 2004 – A letter was sent out to municipalities and PT members inviting them to participate in field data collection visits.

- August/September 2004 – First 2 field data collection dates were conducted, DNR and partners (Lake Mallalieu, Kinni SP)

- September 2004 – DNR attended Lower St Croix Partnership Team Meeting for informational briefing.

- September 16, 2004 – News release sent to media and PT identifying the process.

- October 2004 – Dan Baumann, Water Team Leader, DNR attended Lower St Croix Management Commission meeting to provide OHWM process update

- December 22, 2004- News release sent to media and PT identifying January public meeting dates in Prescott and Hudson to describe the OHWM determination process.

- January 12, 13, 2005 – conducted public informational meetings

- May/June 2005- Conducted three field data collection visits (Prescott, Troy, Somersett (Twin Springs))

- July 7, 2005- News release sent to media, PT and Jan participants identifying July public meeting dates in Prescott and Hudson to share information collected to date.

- July 27, 28, 2005 – held public informational meetings.

- August 12, 2005 – Public Notice sent to media, PT, Jan/July participants identifying the date of the declaratory hearing on August 31, 2005.

- August 24, 2005 - News release sent to media, PT, Jan/July participants identifying the Departments field work findings.

- August 31, 2005 – conduct the Declaratory Ruling hearing.

- September 30, 2005 4pm- Public Record closes.

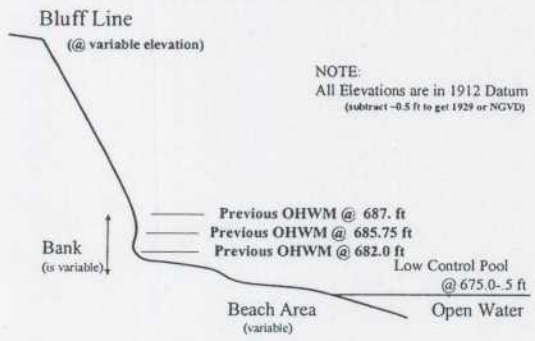
Introduce E ? or Dale ?

Scott / Dan suggest
Comments → Molly read her letter
Clapp
Rolle

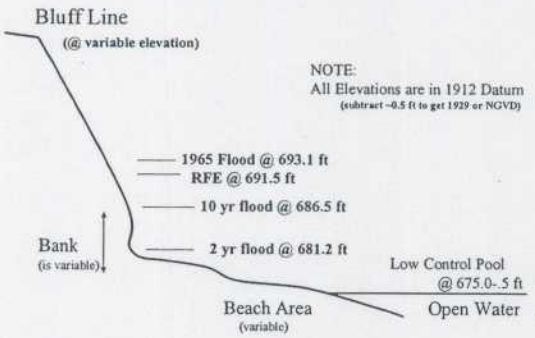
EXHIBIT
tabbies
2

Water & Elevation Data for the St Croix River

Previous OHWM Elevations



Elevations @ Prescott vs Typical Cross Section



Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 772-7910 Fax: (651) 772-7977

August 31, 2005

Mr. B. Dale Simon
101 South Webster
FH/6
Madison, WI 53707

RE: St. Croix Ordinary High Water Mark Determination

Dear Mr. Simon:

You will hear many references to Minnesota's Ordinary High Water Elevation (OHW) in relation to the St. Croix, so I would like the record to reflect some of differences and challenges on how the two states apply and determine OHW for regulatory purposes.

Minnesota's definition of OHW is statutory (103G.005 Subd 14) and reads like this: Ordinary high water level means the boundary of waterbasins, watercourses, public waters and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial;
(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel;
(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Waterbasin is defined as an enclosed natural depression with definable banks. There are no definitions for watercourse, reservoir or flowage in statute or rule. Over the last 10 years, Minnesota DNR has been studying the application of our OHW definition on the Mississippi River system. The Mississippi system is a series of lock and dams, which creates pools. Similar to watercourse, reservoir and flowage, there is no definition of pool in statute or rule. The Mississippi pools do not function and are not operated like named reservoirs in other parts of our state such as the Leech Lake, Winnibigoshish, Red Lake, Big Sandy, etc.

Lake St. Croix existed as a wide spot in the river just like Lake Pepin on the Mississippi prior to lock and dam construction. It has some lake characteristics, but also has undeniable riverine characteristics such as flow and recurrent flooding. Bulletin 25, An Inventory of Minnesota Lakes, published in1968, describes Pepin as being formed by sediments deposited by the Chippewa River which caused partial damming. Likewise, it describes the St. Croix as

originally formed by the damming of Glacial River St. Croix by the Mississippi River, which created a delta across the head of the basin.

Since the pools on the Mississippi do not meet common definitions for reservoir or flowage, we have decided that previous attempts to use a "normal summer pool " elevation as the OHW on these waters was not in accordance with statute. In Minnesota DNR Region 3, we find that the scientific evidence indicates that these river reaches should be treated as watercourses, and that the OHW would be the top of the bank of the channel in accordance with our statutory definition.

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S

A literature search done by our staff found several studies that indicated that the top of the bank of most watercourses would correlate to a 1.5 to 2 year flood level. Thanks to the recent Corps of Engineers flood study work on the Mississippi River, accurate discharge estimates are available and HEC 2 and HECRAS flood models can be used to estimate a 2-year flood elevation at any point on the Mississippi River downstream of the Twin Cities. Therefore, for the past five years or so, we have been using these 2-year flood elevations as an estimate of the OHW (top of bank) for the upper pools of Mississippi in MNDNR Region 3.

The St. Croix is impacted by Mississippi Pool 3, which is created by US Lock and Dam 3 in Red Wing. The elevation we use for the Mississippi for OHW estimates at the confluence of the St. Croix is 679.52 using the 2-year flood elevation. This elevation also correlates with field investigations by our state survey crew who examined tree evidence using our lake OHW methodology. They found consistent physical evidence between 679 and 682 and even higher in some places. For permits to alter the bed of public waters, the MNDNR now uses 679.5' as an estimate of the OHW for the St. Croix south of Stillwater, and continue to use top of bank north of Stillwater.

We could make an on-site determination of the OHW on a case-by-case basis, which is very time consuming and would then require surveying in the mark. Instead, we have decided to rely on an OHW elevation estimate that is based on hydrology/hydraulics modeling and physical evidence. Minnesota believes that the elevations that have been developed over the last 10 years represent an accurate estimate of OHW based on our statutory definitions for these river systems and we are using them with confidence. The application of the location of the OHW for setback purposes is a separate issue that has always been handled by the local units of government, as they interpret and administer their St. Croix Ordinances. We do not anticipate any changes in this procedure under the current regulations. As always, local units of government may choose to be more restrictive.

Wisconsin is now trying to get away from individual site visit OHW's and may decide to use elevations to be responsive to requests and inquiries. We support this effort, but realize that the determination may not be able to be consistent on both sides of the river due to our different statutory definitions and case law.

If you have any questions, please contact me at 651-772-7915.

Sincerely,

Molly Shodeen
Area Hydrologist

c: MNDNR, Jim Japs, Mel Sinn, Scot Johnson, Dale Homuth Kent Lokkesmoe
WIDNR, Eunice Poste, Bob Baczynski

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

Operations
Regulatory Branch

Mr. B. Dale Simon
Wisconsin Department of Natural Resources
101 S. Webster, FH/6
Madison, Wisconsin 53707

Dear Mr. Simon,

This letter concerns the Notice of Public Hearing regarding the Petition of the Department of Natural Resources for a determination of the Ordinary High Water Mark (OHWM) on the portion of the St. Croix River commonly known as Lake St. Croix. This hearing is scheduled for Wednesday, August 31, 2005, at the St. Croix County Government Center.

While the Corps has no comment on the proposal of the WDNR to establish an OHWM for the purposes of administering its state regulatory programs, I believe that it is important to note that the Corps also uses the term Ordinary High Water Mark in our federal Regulatory programs and that the term may have different meanings under federal and state law.

In reviewing federal and state OHWM determinations on the St. Croix River, it has been our experience that, in some circumstances, the Corps has determined an OHWM that is different than the OHWM established under Wisconsin law. Therefore, we believe that it is important that both the WDNR and the general public be aware of the potential jurisdictional differences between our respective state and federal regulatory programs.

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DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

August 31, 2005

Operations
Regulatory Branch

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Wisconsin Department of Natural Resources
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Madison, Wisconsin 53707

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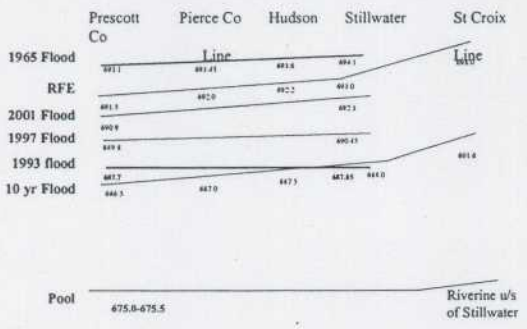
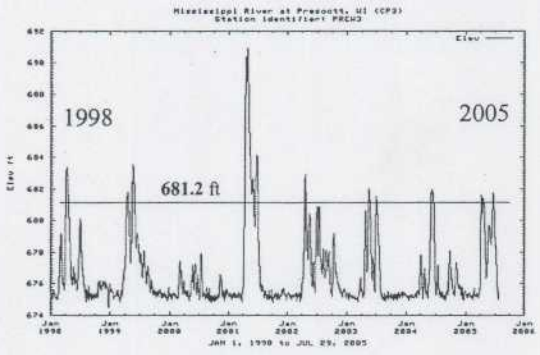
Established or Known Elevations by Location (in feet, 1912 Datum)

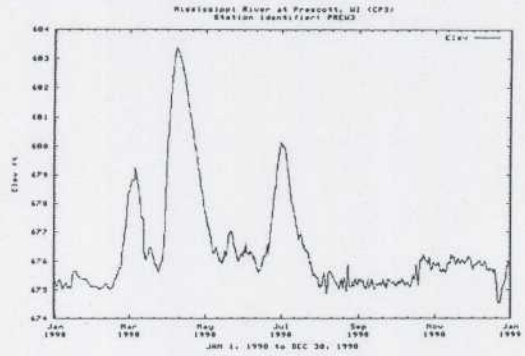


How often are non-flooding levels reached?

Water Elevation Data @ Prescott (1912 adj)

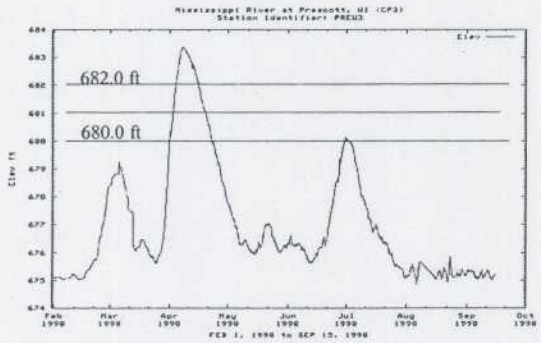


1998 Elevation Data @ Prescott (1912 adj)



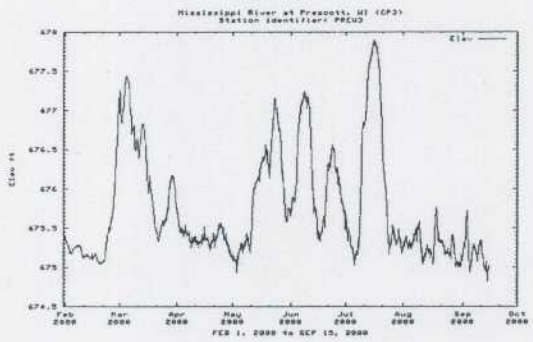
1998 Elevation Data @ Prescott

(1912 adj)



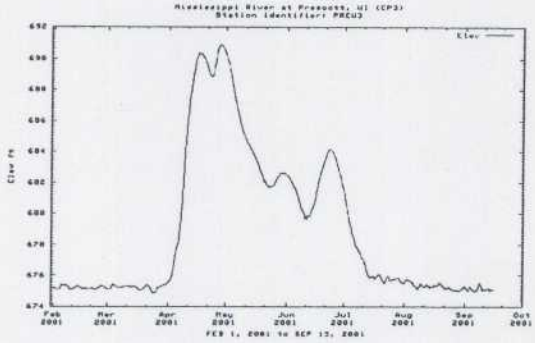
2000 Elevation Data @ Prescott

(1912 adj)

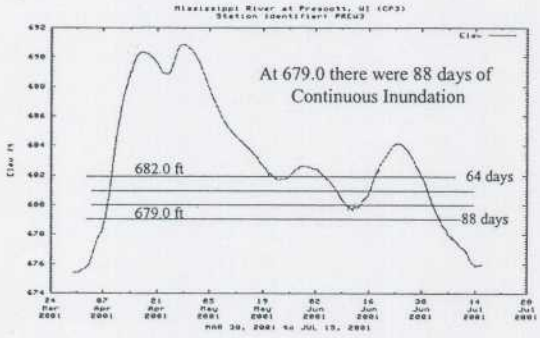


2001 Elevation Data @ Prescott

(1912 adj)

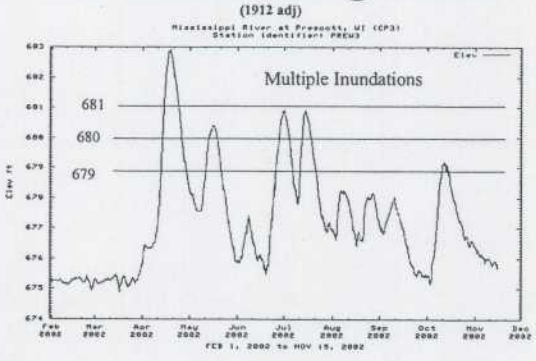


2001 Days vs Elev @ Prescott (1912 adj)



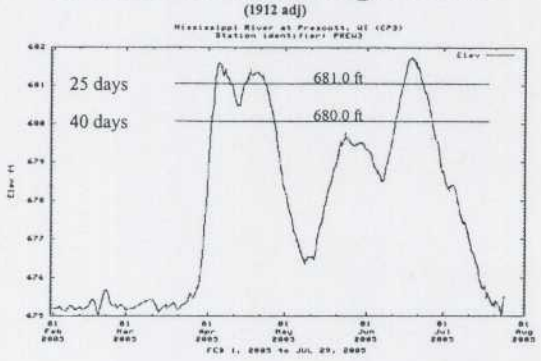
2002 Elevation Data @ Prescott

(1912 adj)



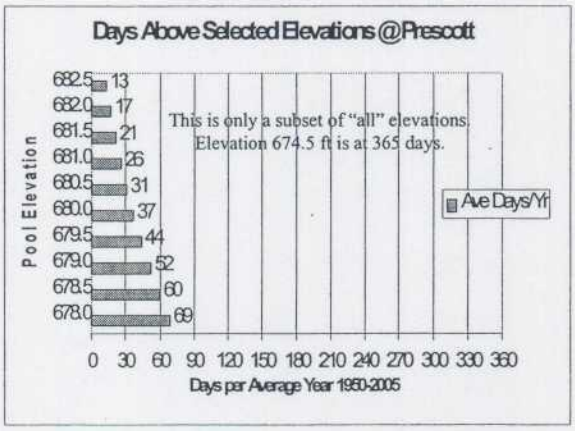
2005 Elevation Data @ Prescott

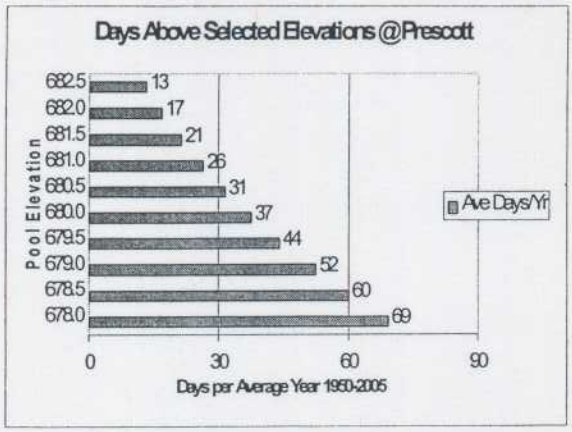
(1912 adj)

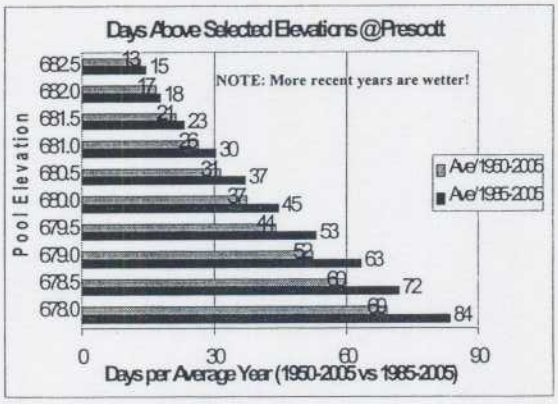


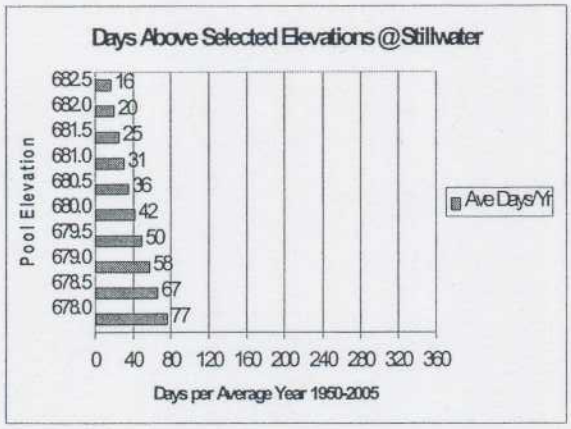
Number of days given levels are reached?
OR
"Percent of time at or above indicated elevation"

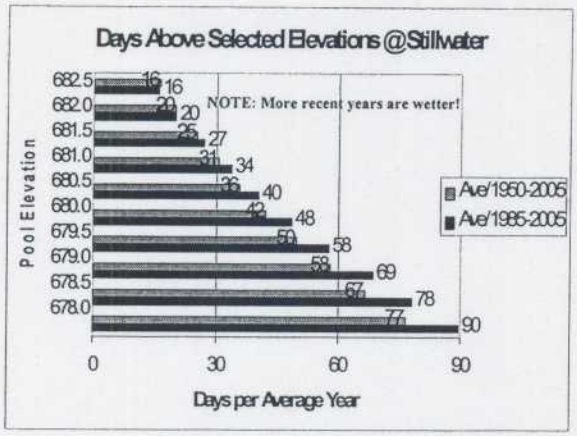
Also known as Inundation Duration




Days Above Selected Elevations @Prescott
Pool Elevation
682.5
682.0
681.5
681.0
680.5
680.0
679.5
679.0
678.5
678.0
13
17
21
26
31
37
44
52
60
69
Ave Days/Yr
0
30
60
90
Days per Average Year 1950-2005


Days Above Selected Elevations @Prescott
NOTE: More recent years are wetter!
Pool Elevation
682.5
682.0
681.5
681.0
680.5
680.0
679.5
679.0
678.5
678.0
13
15
17
18
21
23
26
30
31
37
37
45
44
53
52
63
60
72
69
84
Ave/1950-2005
Ave/1985-2005
0
30
60
90
Days per Average Year (1950-2005 vs 1985-2005)


Days Above Selected Elevations @Stillwater
Pool Elevation
682.5
682.0
681.5
681.0
680.5
680.0
679.5
679.0
678.5
678.0
16
20
25
31
36
42
50
58
67
77
Ave Days/Yr
0
40
80
120
160
200
240
280
320
360
Days per Average Year 1950-2005


Days Above Selected Elevations @Stillwater
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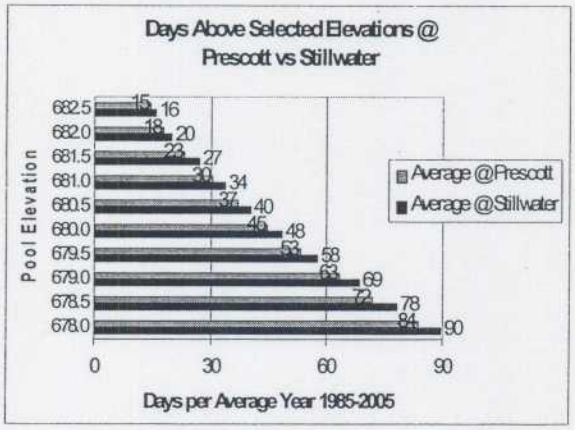
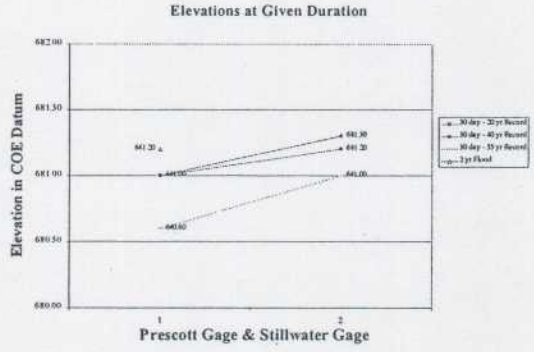
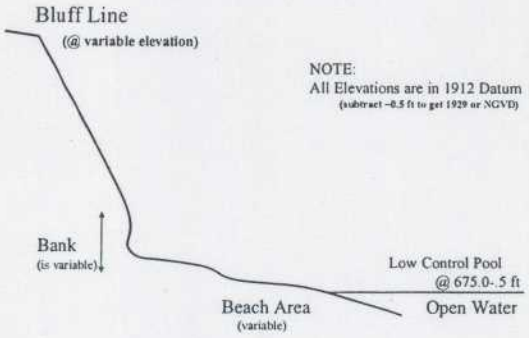
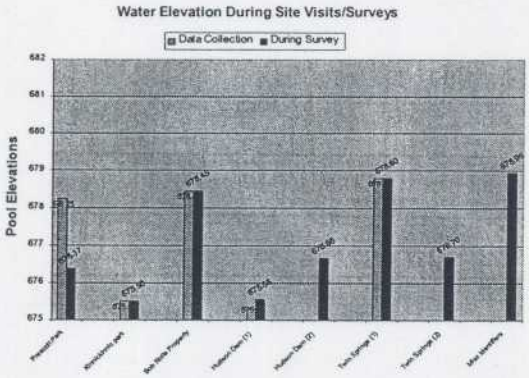
Pool Elevation
682.5
682.0
681.5
681.0
680.5
680.0
679.5
679.0
678.5
678.0
16
16
20
20
25
27
31
34
36
40
42
48
50
58
58
69
67
78
77
90
0
30
60
90
Days per Average Year
Ave/1950-2005
Ave/1985-2005

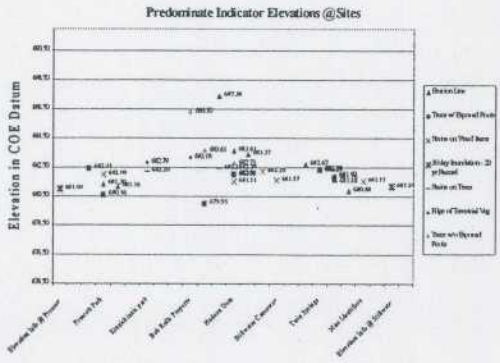

Days Above Selected Elevations @
Prescott vs Stillwater
Pool Elevation
682.5
682.0
681.5
681.0
680.5
680.0
679.5
679.0
678.5
678.0
15
16
18
20
23
27
30
34
37
40
45
48
53
58
63
69
72
78
84
90
0
30
60
90
Days per Average Year 1985-2005
Average @Prescott
Average @Stillwater


Elevations at Given Duration
Elevation in COE Datum
682.00
681.50
681.00
680.50
680.00
681.30
681.20
681.00
680.60
1
2
Prescott Gage & Stillwater Gage

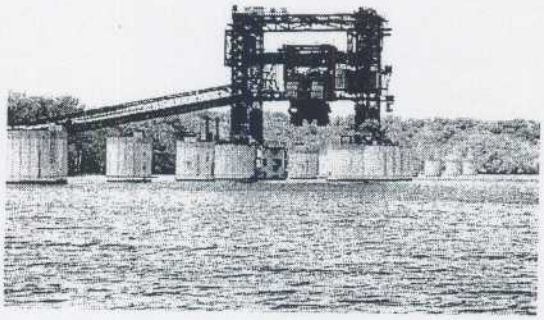
Typical Cross Section





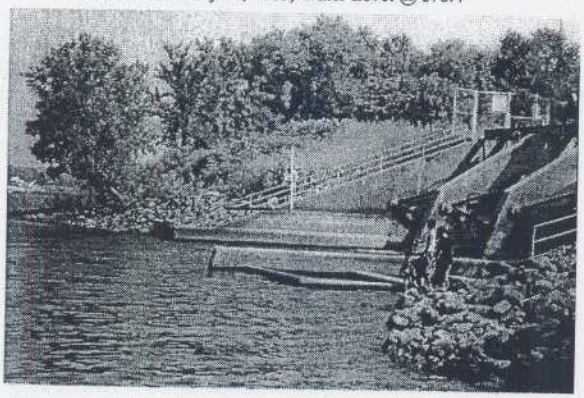


Stain Line was found at 681.55 ft

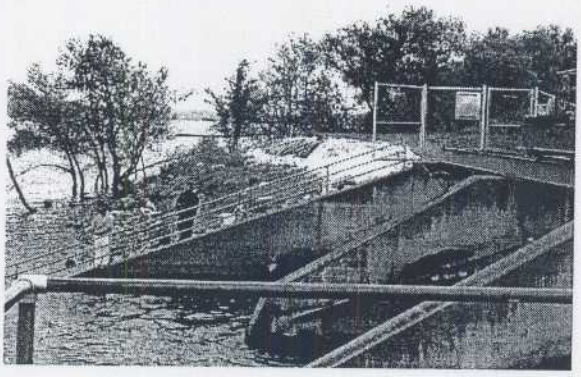


Hudson Dam in 1998 pre-modifications

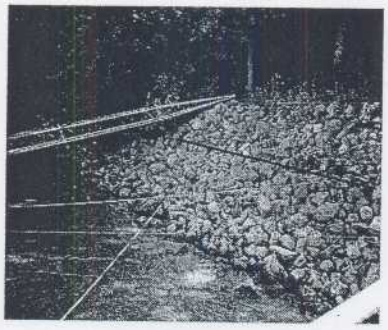
Hudson Dam July 13, 2005, Water Level @ 676.4



Hudson Dam w/ Water Level @ 682.1, May 2001



Water Stain @ Kinnickinnic State Park Riprap



681.8 ft

DEPARTMENT OF THE ARMY
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190 FIFTH STREET EAST
ST. PAUL MN 55101-1638

EXHIBIT
tabbies
3

August 31, 2005

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Chief, Regulatory Branch

EXHIBIT LIST

Exhibit A—Background

A.01) August 18, 2004 letter from Dan Baumann
A.02) DNR Self-Petition for Declaratory Ruling
A.03) News Release for January 12 & 13, 2005 public meetings
A.04) News Release for July 27 & 28, 2005 public meetings
A.05) News Release for August 31, 2005 Declaratory Ruling public hearing
A.06) Riverway map
A.07) St. Croix County Lakes Directory
A.08) Pierce County Lakes Directory
A.09) Original government survey maps
A.10) USGS map
A.11) St. Croix County plat map
A.12) Pierce County plat map
A.13) Riverway Management Zones map
A.14) Aerial photos
A.15) Emails about shoreland & shoreland/wetland zoning administration by local governments
A.16) Previous OHWM survey notes

Exhibit B---OHWM Evaluation Methods, Guidance and Case Law

B.01) Chapter 40, Waterway and Wetland Guidebook
B.02) *Lawrence v. American Writing Paper Co.*, 144 Wis. 556 (1911)
B.03) *Diana Shooting Club v. Husting*, 156 Wis. 261 (1914)
B.04) *State v. MacDonald Lumber Company, Inc.*, 18 Wis.2d 173 (1962)
B.05) *State v. Trudeau*, 139 Wis.2d 91 (1987)

Exhibit C---Field Work Information

C.01) January 12 & 13, 2005 Powerpoint presentation
C.02) July 27 & 28, 2005 Powerpoint presentation
C.03) Twin Springs (TS1) profile of transect 1
C.04) TS1 soils photos/chart
C.05) TS1 vegetation inventory
C.06) TS1 site photos
C.07) Twin Springs (TS2) profile of transect 2
C.08) TS2 soil photos/chart
C.09) TS2 vegetation inventory
C.10) TS2 site photos
C.11) Lake Mallalieu Dam (LMD1) profile of transect 1
C.12) LMD1 site photo
C.13) Union Pacific RR (UP2) profile of transect 2
C.14) UP2 soil photos/chart

C.15) UP2 vegetation inventory
C.16) Rolle property (R1) profile of transect 1
C.17) R1 vegetation inventory
C.18) R1 site photos
C.19) Rolle property (R2) profile of transect 2
C.20) R2 vegetation inventory
C.21) R2 site photos
C.22) Kinnikinnic Park (K1) profile of transect 1
C.23) K1 soil photos/chart
C.24) K1 vegetation inventory
C.25) K1 site photos
C.26) Kinnickinnic Park (K2) site photos
C.27) Prescott (P1) profile of transect 1
C.28) P1 soil photos/chart
C.29) P2 vegetation inventory
C.30) P1 site photos
C.31) Prescott (P2) profile of transect 2
C.32) P2 soil photos/chart
C.33) P2 vegetation inventory
C.34) P2 site photos

Exhibit D---Field Work Wrap Up

D.01) August 31, 2005 Powerpoint presentation

Exhibit E---Additional Information Received To Date

E.01) Tilton county permit application package with OHWM determination
E.02) Mosses information sheet
E.03) Hudson OHWM email correspondence
E.04) OHWM letter from MDNR explaining differences in OHWM between MN and WI

EXHIBIT
tabbies
5

United States Department of the Interior

NATIONAL PARK SERVICE
St. Croix National Scenic Riverway
401 Hamilton Street
P O. Box 708
St. Croix Falls, Wisconsin 54024-0708

IN REPLY REFER TO:

August 31, 2005

W42(SACN)

Scott Humrickhouse
Regional Director, West Central Region
Wisconsin Department of Natural Resources
P.O. Box 4001
Eau Claire, Wisconsin 54702-4001

Dear Mr. Humrickhouse:

Thank you for the opportunity to comment on the state's proposed Ordinary High Water Mark (OHWM) determination for the 25-mile stretch of the Lower St. Croix National Scenic Riverway from Prescott to the Twin Springs area in Wisconsin, commonly known as Lake St. Croix. We have no objection for the state to declare the OHWM for this area to be 681.5 feet for state and local planning and zoning purposes.

Please note, however, that we will use the OHWM established by the U.S. Army Corps of Engineers for review and comment on any water resources project requiring a federal permit under Section 7 of the Wild and Scenic Rivers Act.

Chief Ranger Brian Adams will attend the hearing at the St. Croix County Government Center in Hudson, Wisconsin, on August 31, 2005, and present this letter as our official comment. If you have any further questions please contact Brian at 715-483-3284, ext. 629 or by email at Brian_R_Adams@nps.gov.

Sincerely,

Tom Bradley

Thomas A. Bradley
Superintendent

Minnesota Department of Natural Resources
Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 772-7910 Fax: (651) 772-7977

August 31, 2005

Mr. B. Dale Simon
101 South Webster
FH/6
Madison, WI 53707

RE: St. Croix Ordinary High Water Mark Determination

Dear Mr. Simon:

You will hear many references to Minnesota's Ordinary High Water Elevation (OHW) in relation to the St. Croix, so I would like the record to reflect some of differences and challenges on how the two states apply and determine OHW for regulatory purposes.

Minnesota's definition of OHW is statutory (103G.005 Subd 14) and reads like this: Ordinary high water level means the boundary of waterbasins, watercourses, public waters and public waters wetlands, and:

(1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial;
(2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel;
(3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Waterbasin is defined as an enclosed natural depression with definable banks. There are no definitions for watercourse, reservoir or flowage in statute or rule. Over the last 10 years, Minnesota DNR has been studying the application of our OHW definition on the Mississippi River system. The Mississippi system is a series of lock and dams, which creates pools. Similar to watercourse, reservoir and flowage, there is no definition of pool in statute or rule. The Mississippi pools do not function and are not operated like named reservoirs in other parts of our state such as the Leech Lake, Winnibigoshish, Red Lake, Big Sandy, etc.

Lake St. Croix existed as a wide spot in the river just like Lake Pepin on the Mississippi prior to lock and dam construction. It has some lake characteristics, but also has undeniable riverine characteristics such as flow and recurrent flooding. Bulletin 25, An Inventory of Minnesota Lakes, published in1968, describes Pepin as being formed by sediments deposited by the Chippewa River which caused partial damming. Likewise, it describes the St. Croix as

originally formed by the damming of Glacial River St. Croix by the Mississippi River, which created a delta across the head of the basin.

Since the pools on the Mississippi do not meet common definitions for reservoir or flowage, we have decided that previous attempts to use a "normal summer pool " elevation as the OHW on these waters was not in accordance with statute. In Minnesota DNR Region 3, we find that the scientific evidence indicates that these river reaches should be treated as watercourses, and that the OHW would be the top of the bank of the channel in accordance with our statutory definition.

A literature search done by our staff found several studies that indicated that the top of the bank of most watercourses would correlate to a 1.5 to 2 year flood level. Thanks to the recent Corps of Engineers flood study work on the Mississippi River, accurate discharge estimates are available and HEC 2 and HECRAS flood models can be used to estimate a 2-year flood elevation at any point on the Mississippi River downstream of the Twin Cities. Therefore, for the past five years or so, we have been using these 2-year flood elevations as an estimate of the OHW (top of bank) for the upper pools of Mississippi in MNDNR Region 3.

The St. Croix is impacted by Mississippi Pool 3, which is created by US Lock and Dam 3 in Red Wing. The elevation we use for the Mississippi for OHW estimates at the confluence of the St. Croix is 679.52 (NGVD 1929) using the 2-year flood elevation. This elevation also correlates with field investigations by our state survey crew who examined tree evidence using our lake OHW methodology. They found consistent physical evidence between 679 and 682 and even higher in some places. For permits to alter the bed of public waters, the MNDNR now uses 679.5' (1929) as an estimate of the OHW for the St. Croix south of Stillwater, and continue to use top of bank north of Stillwater. To get to 1912 datum, add .54 to the 1929 elevation.

We could make an on-site determination of the OHW on a case-by-case basis, which is very time consuming and would then require surveying in the mark. Instead, we have decided to rely on an OHW elevation estimate that is based on hydrology/hydraulics modeling and physical evidence. Minnesota believes that the elevations that have been developed over the last 10 years represent an accurate estimate of OHW based on our statutory definitions for these river systems and we are using them with confidence. The application of the location of the OHW for setback purposes is a separate issue that has always been handled by the local units of government, as they interpret and administer their St. Croix Ordinances. We do not anticipate any changes in this procedure under the current regulations. As always, local units of government may choose to be more restrictive.

Mr. B. Dale Simon
August 1, 2005

Wisconsin is now trying to get away from individual site visit OHW's and may decide to use elevations to be responsive to requests and inquiries. We support this effort, but realize that the determination may not be able to be consistent on both sides of the river due to our different statutory definitions and case law.

If you have any questions, please contact me at 651-772-7915.

Sincerely,

Molly Shodeen

Molly Shodeen
Area Hydrologist

c: MNDNR, Jim Japs, Mel Sinn, Scot Johnson, Dale Homuth Kent Lokkesmoe
WIDNR, Eunice Poste, Bob Baczynski

Mr. Francis H. Ogden
710 Valley View Dr.
River Falls, WI 54022

WATER LEVEL 678.45, 5-17-05

Mr. Francis H. Ogden
710 Valley View Dr.
River Falls, WI 54022

EXHIBIT

tabbies

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Mr. Francis H. Ogden
710 Valley View Dr.
River Falls, WI 54022

EXHIBIT
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City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX: (715) 386-3385
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Dennis D. Darnold
Community Development Dir
(715) 386-4776
ddarnold@ci.hudson.wi.us

Elizabeth A. Moline
Administrative Assistant
emoline@ci.hudson.wi.us

Date: July 14, 2005

To: Chris Anderson, Attorney
From: Dennis Darnold, CDD

Sent by facsimile only – 7/14/05

Re: OHWM – City of Hudson / Lower St. Croix River National Scenic Riverway

You asked what criteria the city of Hudson uses to determine the Ordinary High Water Mark (OHWM) or what elevation is used as the OHWM within the city to establish setback requirements for construction within the Lower St. Croix National Scenic Riverway. The city of Hudson has not established a set elevation. In my experience the OHWM is generally at an elevation of 677 msl, plus or minus one-half foot. The characteristics / criteria used by the city of Hudson are specified in Wisconsin Administrative Rules, NR118, Standards for the Lower St. Croix National Scenic Riverway. On-site conditions are verified by inspection by myself, a registered land surveyor or a WisDNR official to determine the OHWM based on characteristics / criteria such as aquatic vegetation and marks established on the river bank due to a continued presence of water. Care should be taken not to misidentify the OHWM with erosion that has been created by periodic flooding that in some instances has left marks on the banks of the river, but may be substantially higher than the OHWM.

Cooperative Management Plan

January 2002

LOWER ST. CROIX
National Scenic Riverway

Wisconsin Department of Natural Resources
Minnesota Department of Natural Resources
U.S. Department of the Interior • National Park Service

Recommended: Anthony L. Andersen **Date:** May 1, 2001
Anthony L. Andersen
Superintendent, Lower St. Croix National Scenic Riverway

Approved: William W. Schenk **Date:** 5/7/01
William W. Schenk
Regional Director, Midwest Region, National Park Service

Approved: Allen Garber **Date:** 5/2/01
Allen Garber
Commissioner, Minnesota Department of Natural Resources

Approved: Darrell Bazzell **Date:** 10/11/01
Darrell Bazzell
Secretary, Wisconsin Department of Natural Resources

Lower St. Croix Land Use Advisory Group
Minutes of Meeting #2, April 14, 1999
(As approved April 29)

Meeting Attendance:

Minnesota DNR: Steve Johnson, Molly Shodeen
Wisconsin DNR: Terry Moe, Eunice Post
Advisory Group representation: Bill Newman, Chisago County; Ann Terwedo, Washington County; Scott Holloway and Jack Warren, Marine on St. Croix; B.F. Lee, Lakeland; George Subiti, Lakeland Shores; John Jansen, Lake St. Croix Beach; Pat Snyder, Afton; Bruce McConoughy, New Scandia Township; Steve Fisher, St. Croix County; Dennis Darnold, Hudson; Gene Anderson, Prescott; Juergen Weidling, Town of Troy; Paul Mosby, Town of Clifton; Joe Riley, Midwest Marina Association; Dave Wald, St. Croix River Association; Audrey Halverson, Sierra Club; Francis Ogden, Citizens for Responsible Zoning and Landowner Rights.
Others attending: Tim Blide, Ann Blide, Richard Mueller, John Ewing, Mary Glenna, Nancy Franz, Stu Krueger, Rod Eslinger, Pat Nolan, Harold Radke, Paige Olson, Tina Swan, Elaine Krengel, Laura Reynolds, John O'Connor, Larry Wolf, Liz Wolf, Linda O'Donnell, Jim Packard, Russell Eichman, Jim Kleinhans, Will Kline, Paul Montgomery, Randy Thoreson, Jan Woodfill, Kitty Rhoades, Jeffrey Sovereign, Bruce Swanson.

Minutes of March 9: The following corrections were made to the minutes of the March 9 meeting: It was agreed they would be called minutes, not summary, and would be subject to formal approval. It was agreed to add text on discussion of the use of existing natural contours for the basis for structure height measurement of new structures and existing condition for additions to existing structures. It was agreed to add text on the determination of average ground level and note that this concept needs additional work. The revised minutes were approved with one dissenting vote.

Discussion included the suggestion that some groups should not have been permitted to appoint more than one member without determining which would be the alternate.

> ***Note:*** *Please note that there is a separate memorandum on this topic being distributed with the advance materials for the April 29 meeting.*

There was also discussion about definition of terms. The DNRs had decided to hold discussion of the definition of terms off until toward the end of the process next fall, when the context of the terms is clear and the group has determined that a particular term will actually be used. Discussion suggested, though, that there are some terms that will

certainly be used and the full implications of a section of the draft generic rule aren't clear until the term is defined, so some definition work should be done as we go. Agreed.

Steve Johnson said the DNRs were prepared to provide for public distribution of all information they had about Advisory Group members, including addresses, phone numbers, fax numbers and e-mail addresses, to make them more accessible to each other and to the general public. If anyone wants to protect their privacy and would like that information to ***not*** be made available to the public, please contact Steve Johnson at 651-296-4802 and leave a voicemail message, or contact him by e-mail at <steve.johnson@dnr.state.mn.us>.

Structure color: Steve Johnson began discussion of structure color by noting historic reference to the standardized Munsell color chart, which is used by the Lower Wisconsin State Riverway Board, among others, to declare which colors meet the definition of "earthtone." The 1976 Appendix A guideline for state rules recommended earthtone color requirements in the rural area, but not within municipalities; state rules in both states, however, subsequently did require earthtone colors in all districts. The 1999 Appendix A guideline for state rules again recommends local governments be free to make their own determinations in the small town historic, small town and river town districts (which make up the bulk of the municipalities). The 1999 guideline also, for the first time, recommends historic structures be able to be painted whatever color is appropriate for their period in history.

Discussion included the suggestion that the Munsell color chart not be followed and that the rule avoid reference to vegetative tones, but there should be reference to natural wood tones, as well as earth and stone. It was noted the purpose of regulation of structure color was to reduce the structure's visibility and enable it to better blend in with the valley's background colors. There was comment supporting the language in the current Minnesota rule that exempted a structure from the color requirement if it was screened by topography. The concept contained in the 1999 Appendix A was adopted unanimously, but it was agreed there needs to be more work done to define "earthtone" and bring that information back to the group.

Note: the earthtone definition will be taken up at a later meeting.

Structure placement (setbacks): Steve Johnson explained that the 1999 Appendix A provides clear guidance on structure setback dimensional requirements, but there are some issues that need discussion. The two states have different definitions of Ordinary High Water Mark (OHWM) or Ordinary High Water Line (OHWL), and Minnesota's definition applies different standards to free-flowing rivers as compared to impoundments. resulting in three standards being applied to the Lower St. Croix. It might be possible to avoid the problem by using another term, like "river's edge," which is used in the 1999 Appendix A, and providing that term with a single definition unique to the St. Croix rules

Steve Johnson said the only pending issue with bluffline setback is defining the term bluffline. Staff will prepare something for further discussion. It was unanimously agreed to include an exemption to setback standards for docks, stairways and lifts. Minnesota rules currently reference an exemption to setback standards for piers, but that reference can be deleted since piers are not allowed on the St. Croix.

Minnesota rules currently provide for a lot width requirement at the building line and at the side abutting or nearest the river; Wisconsin rules provide for a lot width requirement only at the building line. It was unanimously agreed that a lot width requirement at the building line would be sufficient.

Wisconsin rules require a 25-foot structure setback from property lines, while Minnesota rules are silent on the topic and allow local governments to set their own standard in their underlying zoning ordinance. It was unanimously agreed that the Minnesota model is appropriate for the new rules.

The meeting adjourned at 9 p.m.

onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

planned cluster development: (see also 10/28)–MN–"Planned cluster development" means a pattern of subdivision development which places dwelling units into compact groupings while providing a network of commonly owned or dedicated open space.

public roads: MN–"Public roads" means county, municipal, and township roads and highways which serve or are designed to serve flows of traffic between communities or other traffic-generating areas.

public waters: MN–"Public waters" means any waters of the state which serve a beneficial public purpose as defined in Minnesota Statutes, section 105.37, subdivision 6.

recreation use–active: 6/29–"Recreation use–active" means all uses such as tennis, racquet ball clubs, amusement centers, bowling alleys, golf driving ranges, miniature golf, golf courses, ice arenas, movie theaters and similar activities which are used as a commercial enterprise.

recreation use–passive: 6/29–"Recreation use–passive" means a recreation use particularly oriented to utilizing the outdoor character of an area for passive forms of recreation such as employee recreation areas, nature centers, conservancy, and interpretive centers.

repair: "Repair" means normal repairs and maintenance of a structure, including residing, repairs to plumbing and electrical systems, reroofing, installation of storm windows, insulation, installation of replacement heating or air conditioning unit, painting, installation or replacement of plumbing, rewiring/updating to comply with electrical codes, installation of central air conditioning, structural alterations necessary for the safety of the building, and alterations, repair or maintenance reasonably done under emergency conditions to preserve or protect life or property. *(From MDNR Floodplain Management Handbook for Local Officials; based on FEMA guidelines.)*

riprap: 10/28–don't think we need to define this

river's edge: 4/14—"Upstream of the Arcola Sandbar, "river's edge" is defined as the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics. Downstream of the Arcola Sandbar, "river's edge" is defined as elevation 675.0 msl."

ST. CROIX LANDOWNERS ASSOCIATION

Paul Mosby, President

ORDINARY HIGH WATER MARK
The point from which setback is measured.

Lake St. Croix is that body of water from just above Stillwater, 24 miles, to the Mississippi River. The federal government aptly calls it a lake with a river flowing through it. The two states call it a river. Inclusion of the St. Croix under the federal Wild and Scenic Rivers Act in 1974 requires both states be as similar as possible in regulation of the resource.

The Wisconsin DNR is in the process of setting a new OHWM on Lake St. Croix. They are considering making the OHWM 8 to 9 feet higher than that used by the Minnesota DNR on the west side of the lake.

Lake St. Croix is impounded water; impounded by lock and dam 3 on the Mississippi River. Therefore, the water level on Lake St. Croix is artificially set and maintained. On average, for more than 9 months of the year, this water level is 675 ft. mean sea level – 1912 datum. The rivers edge at 675 is an easily identifiable and predictable point from which to measure setback.

Setback is the most critical issue in determining what you can do on your property. Namely, whether your dwelling and other structures are dimensionally nonconforming or even the future possibility of any new construction. Setback, in fact, determines the value of your property.

A blue ribbon panel was formed by WIDNR in 1999 to debate Lower St. Croix land use matters and make recommendations to them. This group was made up of 80% local government representatives and 20% stakeholder group representatives. It met 22 times over a period of 3 years. On April 14, 1999, this group, **the Lower St. Croix Land Use Advisory Group, after lengthy debate, voted unanimously to recommend WIDNR adopt the term "rivers edge at 675" to be used as the point from which to measure setback - - - just as Minnesota has for more than three decades on Lake St. Croix.**

The Wisconsin DNR refuses to accept "rivers edge at 675" as the point form which to measure set back and instead insists upon OHWM. This will create and maintain significant differences in nonconformities on the Wisconsin side vs. Minnesota. This is flatly unacceptable.

Very credible studies by private engineering firms (both Barr and Ogden) in recent years have found the OHWM on Lake St. Croix to be 677 ft. mean sea level – 1912 datum. The City of Hudson has used 677 ft. mean sea level – 1912 datum for more than 15 years while the WIDNR has forced the Village of North Hudson to use 687 ft. mean sea level.

W 12821 720th Avenue • River Falls, WI 54022

Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-40__

EXHIBIT
tabbies
#15

August 30, 2005

Mr. Paul Mosby
Preferred Tours
5884 Prairie Rider Drive
Shoreview, MN 55126

Dear Mr. Mosby:

Minnesota DNR will be submitting comments to the Wisconsin DNR for their considerations at the OHW hearing. Minnesota uses 679.5' for the OHW elevation. Historically, the elevation used for determining setback in Minnesota was 675.0'. Local government will continue to determine what elevation to use for determining setback.

Sincerely,
DNR Waters

Kent Lokkesmoe
Director

Waterway and Wetland Handbook
CHAPTER 40
ORDINARY HIGH-WATER MARK (OHWM)

GUIDANCE PURPOSE AND DISCLAIMER

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule apply. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance cannot be relied upon and does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decision made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes, common law and administrative rules to the relevant facts.

This file is an electronic version of a chapter of the Waterway and Wetland Handbook. This document was scanned from the master handbook chapter kept at the Bureau of Fisheries and Habitat Protection central office in Madison. All effort was made to ensure this scanned electronic copy is an actual copy of the hardcopy document. Due to the electronic scanning process, there may be rare instances of typographical errors, omissions or improperly formatted pages. Please refer to the master handbook if accurate transcription is required.

I. Purpose

The delineation of the ordinary high-water mark (OHWM) is a critical element in the administration of Wisconsin water law and is necessary for an effective water management program. The OHWM is the boundary between riparian owned uplands and the publicly owned beds of natural lakes. It is the boundary of public rights and interest in the waters of navigable streams and lakes except when the water is above the OHWM public rights are "enlarged." When the water is below the OHWM a riparian owner has a qualified right to use the land between the actual water level and the OHWM.

Department field staff determine the OHWM through on-site investigation and analysis of physical and biological indicators on a case-by-case basis.

II. Definition of OHWM in Wisconsin

Although "ordinary high-water mark" was used in a number of Wisconsin Supreme Court cases in the 1800's, the first definition of ordinary high-water mark is found in the Wisconsin Supreme Court case Lawrence v. American Writing Paper Co. (1911), 144 Wis. 556, 562:

> ...ordinary high-water mark, that is the point up to which the presence and action of the water is so continuous as to leave a distinct mark by erosion, destruction of vegetation, or other easily recognized characteristic.

Three years later the Supreme Court redefined and expanded the definition in Diana Shooting Club v. Husting (1914), 156 Wis. 261, 272:

vegetation under begins or is destroyed.

The "distinct mark" must be manifested by "erosion, destruction of terrestrial vegetation or other easily recognizable characteristic"; however only one of the preceding manifestations need be present to qualify as such a mark. The phrase "other easily recognized characteristic" is highly significant since it allows flexibility as to what indicators in the natural environment qualify as the water-established mark.

Diana also stated:

> And where the bank or shore at any particular place is of such character that it is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below the ordinary high-water mark.

This tells us two things: the area below the ordinary high-water mark need not be covered with water at all times, and where no mark can be found, one can look for marks in other areas and transfer the information through stage or elevation readings. No court cases have specified what a reasonable distance is to find the OHWM at another site nor whether marks must be transferred from similar areas. No court decisions have modified the Diana definition. The Diana definition is flexible and gives the Department the latitude to analyze varying physical conditions.

The courts have not upheld OHWM determinations which were not based on biological or physical indicators. In the case State v. McDonald Lumber Co. (1962) 18 Wis. (2d) 173, the state charged that the defendant illegally placed fill on the bed of Green Bay. The state did not attempt to use the Diana definition to prove the fill was below the OHWM of Green Bay because all the adjacent land was disturbed. Instead, the state offered an elevation for the ordinary high-water mark based on Lake Michigan water level records compiled by the Army Corps of Engineers for the period 1860-1959. The state asserted that the average of the high-water levels recorded was 581.0 feet above sea level and thus the ordinary high-water mark was at that elevation. The trial court found McDonald guilty of filling part of the lakebed but refused to order removal of the fill because the location of the ordinary high-water mark, the boundary of the lakebed, was not proved by the state.

The Supreme Court sustained the trial court's decision ruling that "the term ordinary high-water mark has been defined in Diana Shooting Club v. Husting (1914), 156 Wis. 261, 172," and "that the location of such ordinary high-water mark was not proved by the state" by its use of water level records.

III. Public and Riparian Rights

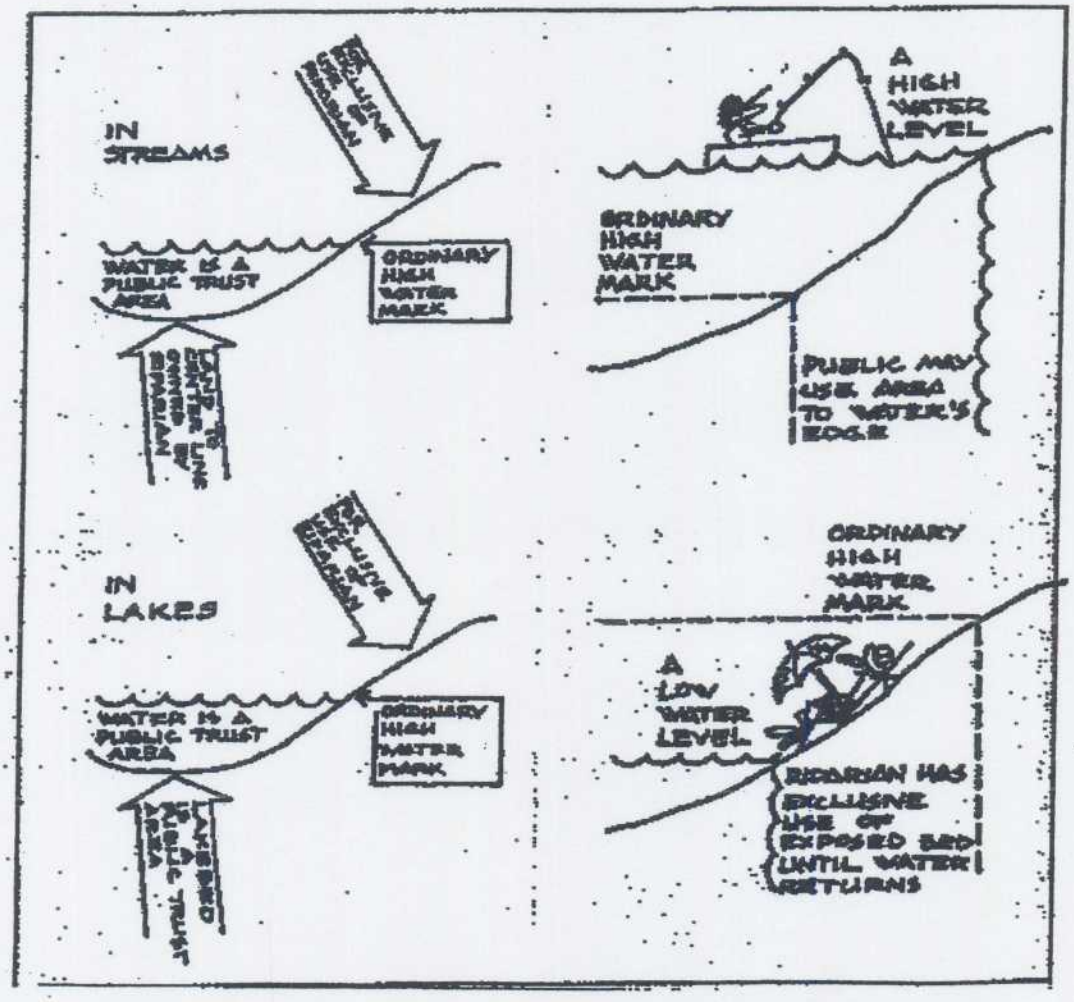
In Wisconsin riparian rights vary in accordance with the nature of the body of water. With respect to the

ownership of the bed of the stream, a riparian owner owns to the thread of the stream (Walker v. Shepardson (1855) 4 Wis. 495; Ne-pee-nauk Club v. Wilson (1897) 96 Wis. 290). The title of the riparian owner is, however, a qualified one, subject to the paramount interest of the state (Muench v. Public Service Comm. (1952) 261 Wis. 492; Ashwaubenon v. Public Service Comm. (1963), 22 Wis. (2d) 38). However, the owner of a land abutting a natural lake owns to the OHWM only, since title to the submerged lands beneath a lake belongs to the state (Angelo v. Railroad Commission (1928) 194 Wis. 543).

Private landowners whose lands make lateral contact with the waters of navigable lakes, where the state owns the bed, enjoy the exclusive right to access for private use (Delaplaine v. Chicago and Northwestern Ry Co., (1877) 42 Wis. 214). The general public can exercise its rights only if access to the water can be gained without trespassing over private property. As the recent decision in State v. McFarren (1974) 62 Wis. 2d 492, which reiterates Doemel v. Jantz (1923) 180 Wis. 225, points out:

> A riparian owner has a qualified right to the land between the actual water level and the ordinary high-water mark; he may exclude the public therefrom but he may not interfere with the rights of the public for navigable purposes.

The sketches below illustrate the public right in relation to the OHWM:



Recall that riparian rights in Wisconsin exist by virtue of ownership of the bank or shore in contact with the water and not by title to the soil under the water (Colson v. Salzman (1956) 272 Wis. 397 and Diedrich v. Northwestern Union Ry Co. (1877) 42 Wis. 248 (involving a lake)). In Wisconsin the general rule is that the owner of the upland abutting a natural stream or body of water is presumed to possess riparian rights. However, because riparian owners may separate the riparian rights from ownership of the abutting lands it "is equally clear that one who acquires land abutting a stream or body of water may acquire no more than is conveyed by his deed" (Mayer v. Grueber, (1965), 29 Wis. (2d) 168).

The presumption in favor of owning a portion of the bed of a waterway is not applicable where an artificial lake or body of water is concerned. "An artificial lake located wholly on the property of a single owner is his to use as he sees fit, provided, of course, the use is lawful. He may if he wishes reserve to himself or his assigns the exclusive use of the lake or water rights." (Mayer v. Grueber, supra). In the Mayer v. Grueber case the court held that the "(D)efendent, who acquired part of a tract of land abutting on an artificial lake by deed described the lake front boundary as running along the easterly bank, could not successfully assert he had been accorded riparian rights to use the lake for recreational purposes as against the claim of the owners of the remainder of the tract who also had title to the submerged land, since he acquired only what was granted by the words of his conveyance - property rights up to the waters edge - and had no ownership rights in the bed of the lake and hence no rights in the waters above."

The ownership of beds underlying artificial lakes or reservoirs caused by the erection of a dam remains in the hands of the abutting owner (or deed holder) unless purchased (Haase v. Kingston Cooperative Creamery Association (1933), 212 Wis. 585). In other words, though a lake now exists, bed ownership is determined as though the prior existing stream still remained. The court ruled "(W)e think the true rule is this: where the owner of land creates an artificial body of water upon his own premises, he may permit the public to enjoy the ordinary use of such waters, and, it may be, that by the lapse of time such enjoyment will ripen into a dedication which he will not be permitted to destroy. But such a use of the waters does not amount to an adverse possession in favor of the state giving the state title to the land under the waters and..."

The court continued "(I)t is true that where waters of a natural, navigable lake are artificially raised, the public and the riparian owners enjoy the same rights in and upon such artificial waters. 'The artificial condition originally created by the dam becomes by lapse of time a natural condition.' Johnson v. Einerman, 140 Wis. 327, 122 N.W. 775. However it does not seem necessary, in order to secure to the public the right which the public has enjoyed for a period of time equal to that required by the statute of limitations, that the title to the land should be held to have thereby passed from private ownership to the ownership of the state."

Among other incidents of riparian ownership, and to preserve the riparian's access to the water, is the right to the land formed by gradual and natural accretions and uncovered by reliction. (Doemel v. Jantz supra., Attorney General Ex Rel. Bay Boom Wild Rice and Fur Co. (1920) 172 Wis. 363 and Baldwin v. Anderson (1968) 40 Wis. 2d 33).) This is true even though the riparian does not have title to the bed of a meandered lake. (Roberts v. Rust (1899) 104 Wis. 619 and Boorman v. Sunnuchs (1877) 42 Wis. 223)

One who owns both banks of a navigable or nonnavigable Wisconsin stream has title to the entire bed of the stream between the boundaries of his land. An interesting exception to the rule that a riparian proprietor owns to the thread of the stream occurs on the Mississippi River. Since that river forms the Minnesota-Wisconsin boundary, and the actual boundary line is the centerline of the main navigation channel of the river, a Wisconsin riparian does not own the bed to the thread of the river, but to the centerline of the main navigation channel (Franzini v. Layland (1903) 120 Wis. 72). The middle of the main navigation channel may be very close to the Wisconsin shore at points and equally close to the Minnesota shore at other points. Consequently, the extent of Wisconsin residents' riparian ownership of the bed would vary, depending on the location of their abutting land. Bed ownership of Lake Michigan as a natural lake is in the bordering states. State v. McDonald Lumber

Company, supra.

IV. Determining the Ordinary High-Water Mark

A. What to look for when making an OHWM Determination

1. Biological Indicators:

a. Mosses: mosses which are located on exposed rocks, stumps, tree roots, etc., are usually considered terrestrial and the lowermost elevation of these mosses is a good indicator of the OHWM. Some water mosses (e.g. Drepanocladus) form long strings and are aquatic and should not be used as indicators of the OHWM.

b. 'Lichen: use these indicators with care for determining the OHWM. Use them mainly for recent, relatively short duration high water stage indicators. Extended high water periods eventually will kill and remove various lichen. Types to look for:

1. Coarse brown lichen - usually lie above extreme high lake stages.

2. Black - usually removed readily by water inundation.

3. Orange Lichen - intermediate in their susceptibility to water destruction.

4. Green Lichen - the lower most elevation of this lichen can indicate the highest water mark in recent years.

c. Trees: the roots of living trees and shrubs along the shoreline will turn up and away from the water. Exposed bases and roots of older trees with roots growing primarily toward the shoreland on a horizontal plane are usually just above the OHWM if no slumpage has occurred.

1. Water roots: Willow trees on the bank will put out red-brown water roots. The start of the water roots will be very near the OHWM. Beware of slumpage.

2. Pancake roots: Birch, maples, tag alder and tamarack will form pancake shaped root mats usually just above the OHWM. Beware of slumpage.

3. Pipe elbow roots: Birch and maple will curve their roots away from water forming a pipe elbow bend. The bottom of the root as it bends away will be very near the OHWM. Beware of slumpage.

d. Pollen: pollen - especially pine pollen - often leaves marks on shore (particularly on large rocks) during spring and early summer. Not an indicator when considered by itself but will indicate recent high-water stages.

e. Large Cattail Mat: The top of large cattail mats are often slightly above OHWM. Be careful of hummocks, floating bogs and mats, but be aware of where they exist in relation to your determination site.

f. Algae stain: On rocks, stumps, etc. look for algae stain lines. On some rocks etc. it is possible that

you find a algae/lichen stain line. Algae marks should not be used as the sole basis for a OHWM determination. Because of high water stages and wave splash algae can grow above the OHWM.

2. Physical indicators: [other easily identified characteristics]

   a. Ice Scars: on trees, soil, etc. Ice marks are usually above the OHWM. Caution prevails in using these, because floods, wind and/or ice expansion can cause ice marks well above the OHWM. They are a good indication of the proximity of the OHWM and can help in a final determination.

   b. Erosion (from wave wash): try using small bays where large waves from high winds would not wash above the OHWM.

   c. Mudstains and debris: Mudstains on trees, stumps, rocks, etc. give a good indication of the proximity of the OHWM. The OHWM will usually be located below the mudstains and debris.

   d. Water stains on rocks, culverts, seawalls, etc.: Water stains on fixed objects are excellent indicators of the OHWM. Generally there will be three stain lines on the object (from the bottom) a gray band, a band of lighter color, and then another band of gray or black. The OHWM is located at the line between the lighter color band and the top dark band.

   e. Leachate marks in the soil: Dig into the immediately adjoining shoreland. Long-term water levels will sometimes leave stain marks in light colored soils known as mottling. Iron is the main coloring substance of the subsoil. Air is absent or in short supply when soils become saturated or nearly saturated with water. When air is absent in the soil, iron exists in the reduced state which is gray in color. When an air supply is present as in well drained soils, the iron is in an oxidized state which is yellowish or reddish in color. Imperfectly and poorly drained soils are nearly always mottled with various shades of gray, brown and yellow, especially within the zone of fluctuation of the water table. Some mottled colors occur unassociated with poor drainage past or present, therefore, such stains should be carefully compared with other indicators. Remember the highest past water level is not necessarily the OHWM.

   f. Change in soil types: Dig into the soil or take cores looking for a change from organic (peat-muck) to mineral soils. Although a soil developing under water may have a high mineral content (usually from water or wind born addition) a soil with a high or exclusive content of organic matter cannot form under well-drained conditions. The presence of a peat or muck profile is therefore a good indicator of a water level that is perpetually at or above the soil surface and thus of an OHWM.

B. Additional considerations

1. Cattails: don't use cattails as sole indicators of the OHWM. Cattail is a clone plant that can be found above and below the OHWM. It is extremely tolerant to extremes in water conditions.

2. Water crawfoot: extremely tolerant of dry conditions, similar to cattails.

3. Steep, cliff areas: avoid steep cliff areas because slumpage of terrestrial vegetation will undoubtedly occur.

4. Disturbed areas: avoid disturbed areas because OHWM indicators will probably be destroyed or absent. If necessary, determine the OHWM elsewhere and transfer the elevation of the OHWM to the disturbed area.

5. Wave windrow areas: avoid wave windrow areas because aquatic and terrestrial vegetation may be smothered by wave carried materials (sand).

6. Trapped water: areas where water is trapped by ice ridges, etc., can indicate an elevated OHWM.

7. Pollen, algae marks as the sole basis: such marks are usually located above the OHWM. Pollen, especially pine pollen, often leaves yellowish marks particularly on large rocks during spring and early summer.

8. Averaging elevations of OHWM determinations. Individual determinations at the same location should be within 0.1 ft. in elevation. Do not average elevations.

9. Winds can cause increased water elevations at ends of long lakes. You may have to return on a calmer day to make an accurate determination of water level with reference to a benchmark. Water levels on the opposite sides of lakes elongated especially in an east and west direction could be effected by prevailing winds. There is therefore a possibility that the OHWM on the east and west ends of such lakes may be at different elevations. If you suspect this to be the case, level work should be tied into U.S.G.S. benchmarks or other reliable datum.

10. On lakes or flowages which are controlled by a dam, be wary of drawdowns, erratic level control operations, broken or missing flashboards, etc., that have or could affect water levels and thus the OHWM.

11. When you have a body of water with an inflow and/or an outflow one of the first things to do in an OHWM determination is to check these locations to see if there are any unusual conditions that could affect your conclusions such as blockages of the inlet or outlet, broken flashboards on the outlet dam, etc. It is also a good idea to tour most of the shoreline and note undisturbed areas before proceeding. If a map of the water body is available, these areas should be marked on the map for further investigation.

12. Remember the highest past water level is not necessarily the OHWM. Whenever possible existing past data on water level reading should be consulted in the determination of the OHWM.

13. Court decisions usually involve the question: could a prudent person have reached the same conclusion as you did in you OHWM determination?

V. How to Locate and Document the OHWM

1. Ordinary High-Water Mark determinations are to be made according to the definition in Diana Shooting Club vs. Husting 156 Wis. 261 (1914).

2. Check district and area files for previous OHWM determinations on the same waterbody. Also check all existing past water level readings.

3. Determine the OHWM using the physical and biological features (indicators) previously identified. Measure the distance of the indicators above or below the water level on the day(s) of observation. The water level on the day(s) of observation should be referenced to an easily identifiable benchmark (one method is to measure down from a culvert or wall to the water level). This benchmark (a measurement spot) should be carefully described and its exact location recorded in writing on the checklist, so that it can be found with ease at a future date if needed.

4. Find another spot near your first measurement and repeat the process. Take an adequate number of

measurements and notes before reaching a conclusion. Elevations of OHWM indicators should generally be within 0.1 feet of each other.

5. You should tie the OHWM elevation into a benchmark of known elevation. The checklist has a space for the elevation of the OHWM. This information could be especially useful when it is necessary to transfer the elevation of an OHWM to an area where there is no distinct mark. The checklist could be consulted to see if there are any OHWM determinations near the site where there was no mark. Then pursuant to Diana, the elevation can be transferred to the site where an OHWM determination is needed.

6. If early aerial photographs or maps of the area exist, they will serve as excellent evidence to support the location of a former shoreline which existed prior to disturbance. You can locate these through local Soil Conservation Services (SCS) offices, the Tomahawk DNR office and the Department of Transportation's Highway Testing Lab in Madison.

7. If you need assistance after exhausting district resources contact the Water Regulation Section.

VI. Educational Materials

There are three pamphlets produced by the Department which should be useful in educating the public on the OHWM and Wisconsin water law:

Wisconsin's Water Regulation Programs Work for You provides a general outline of water regulation permit program.

Public or Private I - Navigability discusses the concept of navigability and how it affects private rights.

Public or Private II - The Ordinary High-Water Mark discusses the relationship of the OHWM to private and public rights.

v:\perm\wz91605i.djd

ORDINARY HIGH WATER MARK

Definition

Ordinary high water mark - "the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic." Diana Shooting Club v. Husting (1914), 156 Wis. 261, 272.

Refer to Chapter 40, Water Regulation Handbook for additional information.

Bed of the waterbody between normal water level and OHWM need not be navigated to assert state jurisdiction (clarified in the Trudeaux case).

Considerations prior to making an OHWM Determination

1. The ultimate decision you make should meet the "reasonable-prudent test." Could a prudent person come to the same conclusion as you?

2. Can you defend your determination sufficiently to hold up in court? This becomes a very important issue where multiple OHWMs are present. Very common for lakes.

3. What kind of documentation will you rely upon to verify your determination? (Plants, water stains, wash marks, etc.) How can someone else varify the location of the OHWM? Will you take photos? Do you need a survey and benchmarks? Will you retain a record of your determination? How? Where?

4. Department liability. As a representative of the state you make a decision that carries great weight. Not only in the sense of determining public and private rights, but your decision is also a potential liability to the state. Recent legislation allows one who is regulated to recover costs and damages for invalid determinations where the judicial system finds the state has erred (see s. 227.115, Stats.). In other words, mistakes can cost lots of dollars.

5. Are you dealing with an altered waterway? Is it a flowage, perched lake or a stream with beaver problems? What has the average annual precipitation been in the past? What is it for the existing year? Are water levels too high (e.g., spring)? Is the waterway frozen (this can have a significant bearing on floating bogs)? All of these factors and more can have a bearing on your ultimate OHWM determination.

Ordinary high water marks are generally established by the presence of water at a given elevation for a minimum of 30-70 days a year, over a twenty year period. Water marks similar to OHWMs can be established in a short period of time. Rely upon OHWM indicators that reflect a long time period. An ordinary high water mark that is indicative of the longest time period will generally be the easiest to defend.

The recommended procedure for determining an OHWM is to identify mature woody upland vegetation and work your way waterward. As you progress waterward you will find transitional plants (plants found above and below the OHWM) and aquatics (plants always found below the OHWM) . Fine tuning of an

OHWM can be accomplished with physical indicators, those generally being wash marks, water stains and soil mottling. These procedures should be repeated on the same waterway at various locations to verify your original determination. Consistent multiple determinations will contribute to your credibility and ability to defend your final decision. Although you cannot use only water level records for the basis of your determination, this data can be used to support or validate your decision. The same holds true for historic photographs and other ancillary data.

Multiple Ordinary High Watermarks - "The Dilemma"

Occasionally you will find yourself in the situation of deciding which one of several distinguishable OHWMs is the right one. The primary factor governing your decision should be which one do you feel most comfortable with and capable of defending. Secondary factors affecting your decision would include parameters generally associated with public interest values such as fishing, swimming, navigation, fish and wildlife habitat, etc. An OHWM that provides protection to these public rights can be used in your defense of an OHWM determination.

That is got to say that these public interest values should dictate your decision (the criteria in Diana dictates your decision!); however, one can effectively argue the benefits to the public interest associated with your determination versus a lower OHWM that does not include these public benefits. One thing you can almost always count on is that your decision will not satisfy everyone's concern.

The following list of plants are indicators that you can utilize in your OHWM determinations. As time progresses this list will expand. If any of you have additional species that you would recommend we add to the list, please share your information.

Aquatic Plants Found Below the OHWM

Scientific Name	*Common Name*
Ranunculus reptans	Creeping buttercup
Dulichium arundinaceum	Three-way sedge
Juncus pelocarpis	N/A
Elodea (Anacharis) canadensis	Waterweed
Eleocharis sp.	Spike rush
Najas lp.	Bushy pondweed
Neobeckia aquatica	Lake cress
Nasturtium officinale	Water cress
Eriocaulon septangulare	Pipewort
Heteranthera 2y.	Mud plantain
Utricularia sp.	Bladderwort
Carex stricta	Niggerhead
Carex comosa	N/A
Carex crus-corvi	N/A
Potamogeton sp.	Pondweed
Zizania aguatica var. angustifolia	Wild rice

Scientific Name	*Common Name*
Nelumbo lutea	American lotus
Nymphia sp.	White water lily
Nuphar microphyllum	Yellow water lily
Potentilla palustris	Marsh cinquefoil
Sparganium lp.	Bur reed
Brasenia schreberi	Water shield
Sagittaria sp.	Arrowhead
Megalodonta Beckii	Water marigold
Potenderia cordata	Pickerelweed
Scirpus fluviatilis	Giant Bulrush
Scirpus validus	Soft Stem Bulrush
Chamaedaphne calvculata	Leather leaf

Transitional Plants Found Above and Below the OHWM

Scientific Name	*Common Name*
Circuta maculata	Water hemlock
Hypericum perforatum	St. John's-Wort
Leersia oryzoides	Cutgrass*
Isoetes sp.	Quillwort*
Alismia gramineum	Water plantain*
Calla palustris	Water arum
Acorus calamus	Sweet flag*
Cyperus sp.	Nut grass*
Alnus sp.	Alder
Typha latifolia	Cattail
Phalaris arundinacea	Reed canary grass
Phragmites maximus	Reed grass
Salix sp.	Willows
Acer saccharinum	Silver maple
Fraxinus americana	White ash
Fraxinus nigra	Black ash
Fraxinus pennsylvanica	Green ash
Larix laricina	Tamarack
Drosera rotundifolia	Round-leaved sundew
Betula nigra	River birch
Cirsium arvense	Canada thistle
Symplocarpus foetidus	Skunk cabbage
Asclepias incarnate	Swamp milkweed*
Solidago graminifolia	Lance-leaved Goldenrod
Polygonum punctatum	Smartweed
Solanum dulcamara	Purple nightshade
Equisetum sp.	Horsetail
Iris versicolor	Blue flag
Iris pseudacorus	Yellow figg
Quercus bicolor	Swamp white oak
Chelone glabra	Turtlehead
Populus deltoides	Cottonwood
Rumex crispus	Curly dock
Impatiens capensis	Jewelweed*

*Most often located below the OHWM

Plants Commonly Found Above the OHWM

Scientific Name	*Common Name*
Quercus rubra	Red oak
Quercus alba	White oak
Acer rubra	Red maple
Betula lutea	Yellow birch
Betula papyrifera	White birch
Asclepiias syriaca	Common milkweed
Solidago altissima	Tall goldenrod
Pinus sp.	All species of pine
Cichorium intybus	Chicory
Alopecurus ramosus	Foxtail
Canabis sativa	Marijuana
Plantago major	Common Plantain
Xanthium strumarium	Cocklebur
Fragaria virginiana	Common strawberry
Prunella vulgaris	Heal-all
Urtica dioica	Stinging nettle
Pilea pumila	Clearweed
Setaria sp.	Foxtail
Tragopogon dubius	Yellow goatsbeard
Tradescantia virginiana	Spiderwort
Ratibida pinnata	Prairie coneflower
Rudbeckia hirta	Blackeyed susan
Erigeron annus	Daisy fleabone
Plantago lanceolata	English plantain
Daucus carota	Queen Anne's lace
Heracleum lanatum	Cow parsnip
Verbascum thapsus	Common mullein
Oenothera biennis	Evening primrose
Capsella bursa-pastoris	Shepherd's Purse
Trifolium pratense	Red clover

CEDAR
ELM

JAMES "LOUIE" FILKINS
Professional Engineer
Registered Land Surveyor
Certified Soil Tester

OGDEN ENGINEERING COMPANY INC.

Civil Engineering and Land Surveying Solutions Since 1971

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FRANCIS H. OGDEN
Professional Engineer
Registered Land Surveyor

DANIEL P. KUGEL
Certified Soil Tester

JOB. NO. 01-2581

December 28, 2001

Attorney Steve Goff
258 Riverside Drive, PO Box 167
River Falls, Wisconsin 54022

Re: Mike Gresser Property
Lake Street, City of Prescott

Dear Steve;

On October 17, 2001, by letter, you directed me to determine the ordinary high water mark (OHWM) for Mr. Gresser's property located on Lake Street in the City of Prescott, Wisconsin. The enclosed drawing, along with this letter, documents my findings.

You provided me with copies of two Certified Survey Maps recorded in Volume 3, Pages 200, 201, a Site/Grading Plan prepared by Terry Scholz of Colonnade Design Group Inc., dated April 30, 1996, and a letter dated October 12, 2000 to Jayne Brand, City of Prescott, from Eunice Post, Water Regulation and Zoning Specialist, Wisconsin Department of Natural Resources.

I have determined the OHWM using the definition contained in NR118.06(3)(a)(1), Wis. Admin. Code, Standards and Criteria for the Lower St. Croix National Scenic Riverway. NR115.03(6) Wis. Admin. Code, Wisconsin Shoreline Management Program contains a slightly different definition of OHWM, which also applies.

Determining the OHWM along Lake St. Croix is not an exact science. Large annual fluctuations of the water elevation, man made and natural wave action and man made alterations of the shoreline make it difficult to make this determination. My professional opinion is that the OHWM at the Mike Gresser property is elevation 682.0.

Eunice Post's letter indicates that she and Dan Koich, another WDNR employee, determined the OHWM is at elevation 687.16. The 100' building setback line is measured from the OHWM. The more than 5' difference in elevation between the two determinations causes the 100' setback to differ from 8' to 13' across Lot 2, which is the site of Mr. Gresser's proposed home. Eunice Post's determination requires greater setback than mine. These setback lines are shown on the drawing.

The WDNR has made various determinations of the OHWM on Lake St. Croix between the City of Prescott and the City of Stillwater. Based upon those determinations, St. Croix Zoning Office uses elevation 683 upstream from the Interstate 94 bridge in Hudson to Stillwater and elevation 682 downstream from the I-94 bridge to the Pierce County line. Pierce County Land Management Department does not have an established elevation for the OHWM from the St. Croix county line to the City of Prescott.

NR118 Wis. Admin. Code and the equivalent Minnesota Rules were intended to create uniform setbacks on both the Wisconsin and Minnesota sides of the river. The setbacks on the Wisconsin side are usually much larger because Minnesota Rules measure the setback from elevation 675 between Prescott and Stillwater. As shown on my drawing, measuring from elevation 675 rather than 682 or 687.16 is significant. The Minnesota Rules place the setback line riverward of Lot 2. The difference between the Minnesota and WDNR setbacks in this case is an average of 48'.

Respectfully,

Francis H. Ogden

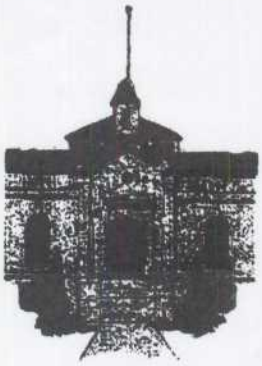
Francis H. Ogden

FHO/rs

Enclosed: Determination of OHWM for Mike Gresser Property Drawing dated 12/28/01

7-29-05

STEVE GOFF
I AM NOW ADVOCATING ELEVATION 677.5 ON THE CITY OF PRESCOTT'S VERTICAL DATUM WHICH EQUALS 677.5 ON THE U.S. CORPS OF ENGINEER'S DATUM. F. Ogden



City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX: (715) 386-3385
www.ci.hudson.wi.us

Dennis D. Darnold
Community Development Di
(715) 386-4776
ddarnold@ci.hudson.wi.u

Elizabeth A. Moline
Administrative Assistant
emoline@ci.hudson.wi.us

Date: July 14, 2005

To: Chris Anderson, Attorney
From: Dennis Darnold, CDD

Sent by facsimile only – 7/14/05

Re: OHWM – City of Hudson / Lower St. Croix River National Scenic Riverway

You asked what criteria the city of Hudson uses to determine the Ordinary High Water Mark (OHWM) or what elevation is used as the OHWM within the city to establish setback requirements for construction within the Lower St. Croix National Scenic Riverway. The city of Hudson has not established a set elevation. In my experience the OHWM is generally at an elevation of 677 msl, plus or minus one-half foot. The characteristics / criteria used by the city of Hudson are specified in Wisconsin Administrative Rules, NR118, Standards for the Lower St. Croix National Scenic Riverway. On-site conditions are verified by inspection by myself, a registered land surveyor or a WisDNR official to determine the OHWM based on characteristics / criteria such as aquatic vegetation and marks established on the river bank due to a continued presence of water. Care should be taken not to misidentify the OHWM with erosion that has been created by periodic flooding that in some instances has left marks on the banks of the river, but may be substantially higher than the OHWM.

Rod Eslinger

From: Post, Eunice A [PostE@mail01.dnr.state.wi.us]
Sent: Monday, November 27, 2000 2:14 PM
To: 'rode@co.saint-croix.wi.us'
Subject: st croix ohwm

here you go

Kolliner Park-683
Mallalieu Dam-685.75
Marzoff-682
Shiely-686 (in Prescott)
Gresser-687 (in Prescott)

to my knowledge, and I will keep checking, this is what is on the books so
far.
Eunice Post
Water Regulation & Zoning Specialist
Lower Chippewa Basin/St Croix Sub Basin Water Team
Wisconsin Department of Natural Resources
Baldwin Service Center
Baldwin WI 54002
715-684-2914

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Scott Humrickhouse, Regional Director

West Central Region Headquarters
1300 W. Clairemont Avenue
PO Box 4001
Eau Claire, Wisconsin 54702-4001
Telephone 715-839-3700
FAX 715-839-6076
TTY Access via relay - 711

August 3, 2004

REC. 8-10-04

Rep. Kitty Rhoades
P.O. Box 8953
Madison, WI 53708

Subject: Ordinary High Water Mark determination for Lake St. Croix

Dear ~~Representative~~ KITTY Rhoades:

You are very familiar with the ongoing controversy and misunderstanding regarding the issue of the Ordinary High Water Mark (OHWM) for Lake St. Croix on the St. Croix River. To resolve this matter I have instructed my staff to complete a comprehensive determination of the OHWM for Lake St Croix.

The process that we follow will involve all interested stakeholders and will culminate in a Declaratory Ruling, which is a formal finding that will establish the OHWM elevation on Lake St Croix. This determination can be legally appealed, although it is our intent to provide sufficient opportunity for public input that all stakeholders will accept the ultimate determination, obviating the need for litigation.

We will initiate the process this month, and plan to meet with the Lower St. Croix Partnership Team in September to discuss timelines and input mechanisms. We will also publicize information about the process widely so as to provide opportunity for involvement to any other interested parties. The process will incorporate numerous opportunities for input, including participation in necessary field investigations and information-gathering this fall and next spring. There will also be several meetings throughout the winter where the public will be encouraged to offer information and perspectives on this matter. We will also hold an informal meeting shortly before the final ruling to gather any last minute information or thoughts. We expect to conclude the process and issue a Declaratory Ruling next summer.

Should you have any questions about this process please feel free to contact Gregg Breese, who will be coordinating the effort for us. Gregg's phone number is (715) 831-3271, and his e-mail address is Gregg.Breese@dnr.state.wi.us. I know this has been a contentious matter for many of your constituents, and I share your desire to have it resolved as quickly, fairly, and definitively as possible.

Sincerely,

Scott Humrickhouse
Regional Director

Ordinary High Water Mark (NR 320.03(4), Wis. Adm. Code): *"Point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics".*

ST. CROIX COUNTY
WISCONSIN
ZONING OFFICE
ST. CROIX COUNTY GOVERNMENT CENTER
1101 Carmichael Road
Hudson, WI 54016-7710
(715) 386-4680 Fax (715) 386-4686

March 15, 2000

Bill Tilton
101 E. 5th Street, #2220
St. Paul, MN 55101

RE: 278 West Grove Road

Dear Mr. Tilton:

Per our discussion on March 9, 2000, regarding your plans to expand your existing structure, I have the following comments.

As you are aware, your house is located in the floodplain of the St. Croix River (Lake St. Croix), in the St. Croix County River Valley District, and in the St. Croix County Shoreland District. Note: You are subject to comply with all of the St. Croix County Zoning Ordinance provisions related to Floodplain Zoning, Shoreland Zoning, and the St. Croix County River Valley District.

On March 10, 2000, I met with Gary Lepak, DNR engineer, to review your protect. Mr. Lepak pointed out that the floodway elevation for the St. Croix River, south of the I-94 Bridge, corresponds to the 688 foot contour line. The regional flood elevation (RFE) is listed at 691.6 feet above mean sea level (msl). The floodway determination is an acceptable floodway delineation by the county and the DNR.

Mr. Lepak also indicated that Dan Koich of the Department of Natural Resources established the Ordinary High Water Mark (OHWM) at 682 feet above mean sea level for the St. Croix River south of the I-94 Bridge. The Department of Natural Resources can establish the OHWM according to section 17.26 (4) (b.). These elevations for the OHWM and for the floodway for the St. Croix River, south of the I-94 Bridge, have been applied to other projects along this portion of the St. Croix River (Lake St. Croix).

According to your site plan submitted by James Filkens, it is very clear that your house is shown at an elevation which is below the identified floodway elevation of 688 feet above mean sea level. Therefore, you must comply with Sec. 17.47 (2) of the Floodplain Ordinance. .

Furthermore, your structure does not meet the dimensional setback requirements as established in the St. Croix County Shoreland Ordinance (75 feet from the OHWM) and St. Croix County River Valley District Ordinance (200 feet from the OHWM). The proposed additions, as shown on your site plan, do not meet the provisions listed in the St. Croix County Zoning Ordinance for the following reasons:

1. It is found that your structure is located in the floodway of the St. Croix River.

2. Your structure is located 65 feet from the OHWM. This does not comply with the dimensional setback requirements as established in the St. Croix County Shoreland Ordinance. (Sec. 17.31 (2) - 75 feet from the OHWM) and the St. Croix County River Valley District (Sec. 17.36 (4) (c) (1.) - 200 feet from the OHWM).

    a. The **deck addition as shown on the plot plan,** increases the size of the existing deck. By adding on to the deck you are increasing the nonconformity of the structure. You may apply for a variance, however the applicant must prove hardship.

b. **The house additions (#2 & #3 as shown on the plot plan)** on the southeast side of the house also increases the nonconformity of the structure by adding onto the footprint and will not be considered with this project. You may apply for a variance, however the applicant must prove hardship.

If you have any questions, please do not hesitate to call.

Sincerely,

Rod Eslinger

Rod Eslinger
Zoning Specialist

Cc: Louie Filkens
Gary Lepak, DNR engineer

Sent 12/10/04

To: dan.baumann@dnr.state.wi.us
From: Paul Montgomery <apintl@pressenter.com>
Subject: 675 MSL
Cc:
Bcc:
X-Attachments:

Dan,

Much earlier our Land Use Advisory was unanimous in recommending WI adopt MN's 'Rivers Edge@675' concept. If keeping 'O.H.W.M.', set it at 675 MSL for WI.

That exact figure is required by the Corps of Engineers to maintain the level of Lake St. Croix @ not less than 675MSL.

This figure has been sanctioned universally and is THE number for WI to endorse for inclusion in DNR doings as reasonable, dependable and identifiable. 675MSL is THE level from which to measure set back.

In Prescott we NEVER AGAIN want to see the 'ever-moving stake dance' as performed by Ms. Eunice Post on the contested Gresser lot. Be the Leader!

I strongly advocate providing Free '675' tattoos for St. Croix landowners!

Paul

P.S. At Mosinee I advocated that if you could not settle on 675 then go to 674!
I'm indelibly back to 675.

--
Paul Montgomery
A&P International
577 Locust Street
Prescott, WI 54021

EIN 41-1436456
Phone: 715-262-5788
Fax: 715-262-3823
http://www.pressenter.com/~apintl

The WI-DNR is hosting an important Public Hearing to the High Water Mark on the Lower St. Croix. We urge anyone who owns property on or near the river to attend. The DNR's game is to 'scientifically' proliferate their control over the WI side. Normal pool is 675' as maintained by the US Corps of Engineers. That height was chosen by MN-DNR.

WI-DNR will divulge a figure we suspect will be around 8' higher (683'). This means the new Ordinary High Water Mark on the Lower St. Croix will adversely affect riparian homeowners in Pierce & St.Croix Counties (includes Prescott & Hudson).

Setbacks for building permits are determined by a distance measured from the High Water Mark. New construction of highly-taxed St. Croix shoreline homes/additions in WI will be pushed back to infinity. Construction on the riverway will all but cease if the DNR gets by with this senseless litigation.

The meeting is Wednesday, August 31 at 6:00 p.m. in the St. Croix County. Govt. Cntr, 1101 Charmichael Rd, Hudson. Statements & questions will be heard. Written comments have the same weight as oral statements. Send them to: B. Dale Simon, 101 S.Webster, FH/6, Madision WI 53707. Comments must be received by Sept. 30th.

A follow-up letter will be submitted to announce the High Water Mark figure demanded by DNR. The deadline & address for written comments will be repeated.

Paul Montgomery
Prescott, WI

262-5788

Paul Montgomery
A&P International
577 Locust Street
Prescott, WI 54021

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FACSIMILE TRANSMISSION – COVER SHEET

TO: STEVE GOFF FAX# 715-425-7413

COMPANY: LAW FIRM

FROM: MIKE C. GRESSER

Facsimile Number: (651) 454-4850

This transmission contains 3 page (s) including this cover page.

Date: 8-25-05 Time: 1:30 p.m.

Dear Steve: Please find a letter from Mr. Paul Mosby regarding the WI DNR meeting on 8-31-05 @ Hudson Wisc. Also Steve, who has my file on my Prescott property? If possible I'd like to have breakfast with you before 8-31-05 meeting. If that's possible, please call me at 612-720-5515.

Hope you are feeling fine.

Mike C.

ST. CROIX LANDOWNERS ASSOCIATION

URGENT

ORDINARY HIGH WATER MARK
The point from which setback is measured.

Lake St. Croix is that body of water from just above Stillwater, 24 miles, to the Mississippi River. The federal government aptly calls it a lake with a river flowing through it. The two states call it a river. Inclusion of the St. Croix under the federal Wild and Scenic Rivers Act in 1974 requires both states be as similar as possible in regulation of the resource.

The Wisconsin DNR is in the process of setting a new OHWM on Lake St. Croix. They are considering making the OHWM 8 to 9 feet higher than that used by the Minnesota DNR on the west side of the lake.

Lake St. Croix is impounded water; impounded by lock and dam 3 on the Mississippi River. Therefore, the water level on Lake St. Croix is artificially set and maintained. On average, for more than 9 months of the year, this water level is 675 ft. mean sea level – 1912 datum. The rivers edge at 675 is an easily identifiable and predictable point from which to measure setback.

Setback is the most critical issue in determining what you can do on your property. Namely, whether your dwelling and other structures are dimensionally nonconforming or even the future possibility of any new construction. Setback, in fact, determines the value of your property.

A blue ribbon panel was formed by WIDNR in 1999 to debate Lower St. Croix land use matters and make recommendations to them. This group was made up of 80% local government representatives and 20% stakeholder group representatives. It met 22 times over a period of 3 years. On April 14, 1999, this group, **the Lower St. Croix Land Use Advisory Group, after lengthy debate, voted unanimously to recommend WIDNR adopt the term "rivers edge at 675" to be used as the point from which to measure setback - - - just as Minnesota has for more than three decades on Lake St. Croix.**

The Wisconsin DNR refuses to accept "rivers edge at 675" as the point form which to measure set back and instead insists upon OHWM. This will create and maintain significant differences in nonconformities on the Wisconsin side vs. Minnesota. This is flatly unacceptable.

Very credible studies by private engineering firms (both Barr and Ogden) in recent years have found the OHWM on Lake St. Croix to be 677 ft. mean sea level – 1912 datum. The City of Hudson has used 677 ft. mean sea level – 1912 datum for more than 15 years while the WIDNR has forced the Village of North Hudson to use 687 ft. mean sea level.

W 12821 720th Avenue • River Falls, WI 54022

WIDNR has now decided to hold a public hearing on OHWM on Lake St. Croix.

- **WHEN:** August 31, 2005 from 6 to 8 p.m.
- **WHERE:** St. Croix County Government Center, 1101 Carmichael Road, Hudson, WI
- **WHAT:** Strongly advocate Wisconsin DNR adopt "rivers edge at 675" feet mean sea level – 1912 datum as the point from which setback is to be measured on Lake St. Croix.
- **WHY:** **Your basic property rights are threatened by an excessively high OHWM. This, with NO increase in the preservation or protection of the resource.**

Please try to attend this hearing and express your strong dissatisfaction with WIDNR process relating to OHWM and adamantly advocate adoption of "rivers edge at 675 feet mean sea level – 1912 datum" for setback measurement point!

Additionally, e-mail the same brief comments to Scott Humrickhouse, Sheila Harsdorf and Kitty Rhoads.

Scott Humrickhouse, Reg. Dir.
West Central Region
Wisconsin Department of Natural Resources
Phone: 715-839-3700
Fax: 715-839-6076
E-mail: scott.humrickhouse@dnr.state.wi.us

Sen. Sheila Harsdorf
Phone: 608-266-7745
Toll Free: 800-862-1092
Fax: 608-267-0369
E-mail: sen.harsdorf@legis.state.wi.us

Rep. Kitty Rhoades
Phone: 608-266-1526
Toll Free: 888-529-0030
E-mail: rep.rhoades@legis.state.wi.us

If you cannot make the hearing, PLEASE make an effort to send three brief e-mails. No details or explanations are necessary.

If you have questions or need more information, I may be reached at 715-262-5299.

Paul Mosby, President
St. Croix Landowners Assn.

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: August 30, 2005 FILE REF: IP-WC-2005-0562ML

TO: File

FROM: Eunice Post, DNR/Baldwin

SUBJECT: Ordinary High Water Mark—Lower St Croix River----Beginning at the confluence with the Mississippi River at Prescott, Wisconsin upstream 25 miles to the boundary between the state and federal management zones.

Background

On May 26, 2004, the Natural Resources Board approved revisions to Wisconsin Administrative Code NR 118. As part of the public testimony at that hearing, the Ordinary High Water Mark (OHWM) for the Lower St Croix River was reported by members of the public to be inaccurate and needed to be revisited. To evaluate the OHWM the Department of Natural Resources self petitioned for a declaratory ruling regarding the OHWM. The information concerning the OHWM in this memo, with supporting documentation, addresses only the lower 25 miles of the state zone in St Croix and Pierce counties, Wisconsin. (See Exhibits A.01-A.05)

In 1972, Congress added the Lower St Croix river to the national wild and scenic rivers system (Public Law 92-560). The Lower St Croix Riverway is a corridor that runs for 52 miles along the boundary of Minnesota and Wisconsin, from St Croix Falls, Wisconsin, to the confluence with the Mississippi River at Prescott, Wisconsin. The U.S. Department of Interior, National Park Service, manages the upper 27 miles—referred to as the federal zone. The states of Minnesota and Wisconsin manage the lower 25 miles---referred to as the state zone.

The St Croix is referenced in Surface Waters of St Croix County as both the St Croix River and as Lake St Croix. The St Croix River drains 4828 square miles of watershed. According to St Croix Surface Waters, Lake St Croix is a hardwater, drainage lake extending from Hudson past Prescott to Diamond Bluff in Pierce County, where an 8-foot head dam (Red Wing, Lock and Dam #3, U.S. Army Corps of Engineers) heightens the original lake level. The St Croix is fed by the Apple, Willow, Kinnickinnic, Big and Wind rivers in Wisconsin and the Mississippi River from Minnesota. Natural Lake St Croix, though now partially impounded, is situated on the lower portion of the stream in St Croix and Pierce counties. As previously indicated, this documentation only addresses the OHWM on the lower 25 miles of the St Croix above Prescott. See attached map (Exhibit A.06)

The Wisconsin Lakes Directory for St Croix County does not include the St Croix as a lake; however, the directory does list Lake St Croix for Pierce County (see Exhibit A.07 & A.08)

The original government land surveys identify the St Croix as both the St Croix River and Lake St Croix (See Exhibit A.09).

The St Croix County plat map identifies the St Croix as the St Croix River from the Polk/St Croix county line downstream to just north of North Hudson where it is called Lake St Croix until Glenmont Road in Troy Township where it is again named the St Croix River until its confluence with the Mississippi River in Prescott as identified in the Pierce County plat map (See Exhibits A.11& A.12).

The water level of the St Croix at low control pool is elevation 675.2 feet mean sea level, 1912 Adjustment, Corps datum. This elevation is maintained by the Corps of Engineers Lock & Dam 3 at Red Wing, MN. Detailed water level information is provided by Gary Lepak, DNR Water Management Engineer.

Most of the lower 25 miles is privately owned, with the exception of public beaches, public accesses both developed and undeveloped, parks and other parcels owned by local governments, Mallalieu Dam, and Kinnickinnic State Park.

Adjacent land use in the lower 25 miles of river is high density residential in the south to rural residential in the north. The river corridor is classified in the Cooperative Management Plan, Lower St Croix National Scenic Riverway, January 2002, (See Exhibit A.13) as follows:

Rural residential-beginning at boundary of the federal/state zone south to North Hudson
Small town-North Hudson
River town--Hudson and approximately 2 miles south of Hudson
Rural residential-south of Hudson to Kinnickinnic State Park
Conservation—Kinnickinnic State Park and land immediately north and south
Rural residential---from south of Kinnickinnic to Prescott north city limit
River town—Prescott

The northernmost portion of this OHWM study includes rural residences on which the National Park Services owns scenic easements. The area south of Twin Springs boat landing to Houlton, Wisconsin, is rural residential and many of the houses are nonconforming structures. In Houlton, residential development is primarily on top of the river bluffs and east at Hwy 35 on the Wisconsin side of the Stillwater lift bridge. The city of Stillwater, MN, is the riparian owner of the land adjacent to the bridge in Wisconsin. From Houlton to North Hudson is higher density rural residential with mostly nonconforming structures. There are only two sizable undeveloped parcels of land remaining in this area. North Hudson, Hudson, and south in the "Cove area" have very dense residential development, most are nonconforming structures for riverway, floodplain and shoreland zoning. Dense residential development with primarily nonconforming structures extends from the Cove area to Prescott. The exception is Kinnickinnic Park and a couple of other undeveloped parcels (See Exhibit A.14)

For purposes of riverway, shoreland and shoreland/wetland zoning, St Croix and Pierce counties both classify the St Croix as a river. The village of North Hudson and the cities of Hudson and Prescott all classify the St Croix as a river (See Exhibit A.15)

Previous OHWMs were set at 682 at the Marzoff property, Town of Troy, St Croix County, 685.75 at the Union Pacific RR property, North Hudson, St Croix County and 687 at the Gresser property, Prescott, Pierce County. The Department does not have the survey information for the 682 and 687 OHWMs. The 685.75 OHWM was set and surveyed by Department staff (See Exhibit A.16).

OHWM Evaluation

The Department conducted field work to re-evaluate the locations of the OHWM on August 31, 2004; September 7, 2004; May 17, 2005; May 18, 2005; and May 19, 2005.

August 31, 2004—The field work was done at the Lake Mallalieu Dam, Transect 1, and the Union Pacific Railroad property south of the dam, Transect 2. The fieldwork team consisted of Dale Holmuth and Molly Shodeen, Minnesota DNR; Dan Seemon, U.S. Army Corps of Engineers; Jim Kleinhans and Emily Lund, Pierce County; Gregg Breese and Eunice Post, Wisconsin DNR (WDNR).

September 7, 2004---Kinnickinnic State Park backwater slough area, Transect 1, pier area, Transect 2. The fieldwork team consisted of Molly Shodeen, Minnesota DNR; Dan Seemon, U.S. Army Corps of Engineers; Jim Kleinhans and Emily Lund, Pierce County; Deb Konkel, Gary Lepak, Dan Helsel and Eunice Post, WDNR.

May 17, 2005----City of Prescott property at north end Lake St, Transect 1, and at south end of property line, Transect 2. The fieldwork team consisted of Bob Rolle and Francis Ogden; Jayne Brand and Jerry Killian, city of Prescott; Jim Kleinhans and Emily Lund, Pierce County; and Eunice Post, WDNR. Also present were Paul Montgomery, Paul Mosby, Mike Hadrian and Charlie Macdonell—if others joined this group, Post was unaware of it.

May 18, 2005---Rolle property at approximately 600 feet from north end of property, Transect 1; and approximately 1150 feet from north end of property, Transect 2 (distances given by Bob Rolle). The fieldwork team consisted of Bob Rolle and Francis Ogden; Gary Lepak and Eunice Post, WDNR. Also present was Bill Tilton. Jim Kleinhans and Emily Lund were also present to identify soils, but could not as explained above.

May 19, 2005---Twin Springs Boat Landing, south of landing, Transect 1, and north of landing, Transect 2. The fieldwork team consisted of Buzz Marzoff; Bob Rolle; Tom Nelson former St Croix Co zoning administrator; Randy Ferrin, U.S. National Park Service; Gary Lepak, Deb Konkel and Eunice Post, WDNR.

June 22, 2005, Gary Lepak and Eunice Post revisited field sites to do follow up survey work; however, water levels were significantly high enough to prevent surveying.

June 30, 2005---Gary Lepak, Conservation Warden Dave Hausman and Eunice Post took pictures of field sites as viewed from the river and other physical indicators; e.g. barge dolphins at the King Power Plant, bridge piers and abutments, riprap.

July 12 & 13, 2005---Gary Lepak and Eunice Post revisited some field sites to survey additional indicators. Also surveyed was the water stain on the riprap on the Stillwater bridge causeway, the area immediately south of the Mallalieu dam downstream embankment and the Prescott field site.

These sites were selected for a variety of reasons. The sites are fairly equally spaced, they provide examples of the shoreline diversity in this reach of the river, minimal trespass concerns, did not unduly inconvenience private landowners, and two sites requested to be evaluated. The Department did receive other requests to have the OHWM evaluated, but logistically could not conduct the needed field work and meet the August 31 public hearing deadline.

The Department has also received public input that four of the five field sites are "disturbed" and that only the Rolle property is "undisturbed." Department staff disagree. A site is "disturbed" if OHWM indicators have been eradicated by artificial alterations and cannot be found. Sites with artificial

alterations can have OHWM indicators, usually when the alteration is fairly old and unchanged so that natural forces can leave marks or revegetate over time. Our field sites had the following artificial alterations:
Twin Springs has a manmade, earthen boat landing and small parking that was built on a naturally-occurring depositional area. Transects were upstream and downstream of the landing and not in the "used" area. Biological and physical indicators were found at both transects.

Lake Mallalieu dam was reconstructed in 1935 after a flood. It is an artificial alteration that has been in place, substantially unchanged, for 70 years. During those 70 years the presence of water has created stains on the dam abutment walls.

The Union Pacific RR property has an abandoned railroad grade inland from our field site. The site has since revegetated and there are several healthy mature trees. Biological and physical indicators are numerous.

The Rolle property has an abandoned logging road embankment (per Bob Rolle). The site has since revegetated and biological and physical indicators were found at both transects.

The Kinnickinnic Park property, transect 1, is the site of a former Corps dredge disposal area. Dredge materials have not been deposited there since the early 1980s. Since then, the site has revegetated and both biological and physical indicators were found at this transect. The sand beach abutting the main river channel is sustains heavy public use, but the backwater slough area does not. The pier area, transect 2, has the boat landing, the riprap on the bank, the pier, and the natural riprap upstream of the pier. Over time, the presence of water has created a stain on the riprap. The area upstream of the pier has natural riprap with vegetation growing at the top. The natural riprap has a water stain consistent in color and location to the stain on the artificial riprap. This stain is a physical indicator.

The Prescott site was identified as undisturbed by city staff, but the public input received purports this site as the former public beach. Biological and physical indicators were numerous at both transects.

The task of the field teams was to find physical evidence to locate the OHWM according to the guidance in Chapter 40, Water Regulation and Zoning Guidebook (See Exhibit B.01). We followed the guidebook as closely as possible; however, this is a guidebook and does not address every situation. We also used the Wisconsin Supreme Court definition of OHWM in Diana Shooting Club v. Husting (1914) and other relevant case law (See Exhibits B.02-B.05). Scientific parameters and indicators used to find the OHWM as identified in the Guidebook:

- Water marks (stains)
- Erosion marks (scars)
- Destruction of terrestrial (upland) vegetation
- Soils
- Morphological plant adaptations
- Plant stress
- Water level records
- Waterbody size (area, slope of bed)
- Artificial physical alterations of the bed and bank (not naturally occurring, man induced disturbances)

All elevations used are 1912 Adjustment, Corps datum. Horizontal measurements began at the water's edge, for that day's water level, starting at 0.

Kleinhans, Lund and Nelson identified soils (Note: Soils could not be identified at the Rolle property due to the naturally-occurring riprap of river rock and presence of bedrock and at the Mallalieu Dam because of riprap placed to protect the dam abutments (an artifical physical alteration). Konkel, Seemon, and Post identified vegetation. Lepak, Helsel, Ferrin and Post did survey work—surveying was done on 9/7/04 and 5/18/05 and 5/19/05. All team members located and helped document biological and physical indicators, water level on the given field day, and artificial physical alterations. Some additional sites were surveyed on 7/12/05 and 7/13/05 because of the presence of water stains, a physical indicator.

Field Work Information

Public informational meetings were held by the Department on January 12 & 13 and July 27 & 28, 2005; to present the field data that was collected, answer questions and take comments about the data, and to ask for additional information and data to help in the effort to find an accurate OHWM. (See Exhibits C.01 & C.02).

Twin Springs Boat Landing
Transect 1—south of the landing (See Exhibit C.03)
Soil borings at 10-, 20-, 30-, 40-, 50-, 60-, and 70-feet from 0. Hydric soils present from 0-60 and base of slope at 65 feet, elevation 681.92 (See Exhibit C.04)
Vegetation was all hydric from 0-65 feet at base of slope, elevation 681.92. At 65+ feet vegetation break from all hydric to some terrestrial (See Exhibit C.05).
Physical indicators from 0-70 were water stains on trees close to river (elevation 681.48 and 681.88)--but not farther inland and we did observe water stains on the trees across the channel (See Exhibit-photo), debris lines at 43, 57(elevation 681.34) and 70 feet (elevation 682.19) and most notable was that moss growth was very predominant, including up tree trunks
Biological indicators were one tree with exposed, and a pipe elbow root that Bob Rolle asked that we note (top of exposed root elevation 681.76), and trees with multiple trunks (See Exhibit C.06).

Transect 2-north of the landing (See Exhibit C.10)
Soil boring at 1 and 19 from 0. Hydric soils present from 0-19. Base of slope was at 19 (elevation 680.88) and start of bedrock. (See Exhibit C.11)
Vegetation was all hydric from 0-30 feet (See Exhibit C.12) Site had hillside seeps so hydric vegetation not used.
Physical indicators were an erosion line at 19 feet (top of erosion line elevation 682.32, bottom 680.88), exposed tree roots at 19 feet (top of roots elevation 682.30-bottom elevation 680.34), water stain on double trunk maple tree just north of transect line (682.25 and 682.26) and moss growth up tree trunks (top of moss elevation 682.07).
Biological indicators were some trees with multiple trunks and a few trees with buttressed roots (See Exhibit C.13).

Lake Mallalieu Dam/Union Pacific RR property
Transect 1-Lake Mallalieu Dam concrete structure and embankments (See Exhibit C.15)
Lake Mallalieu dam was reconstructed in late 1934 and in 1935. The riprap on the embankments was placed in 1998. The dam structure itself is an artificial physical alteration as are the adjacent earthen

embankments covered with limestone riprap. Consequently, no borings were dug to identify soils and no vegetation was inventoried. The principal indicator at this transect is the water stain on the 70-year old dam abutments. We observed three distinct stains on the abutment: a gray band at the top, a bleached area in the middle and a gray area at the bottom. Using the guidebook, the OHWM is located at the line between the lighter color and the top dark band. This location on the dam abutment was found to be elevation 681.5 (See Exhibit C.16).

Transect 2-Union Pacific Railroad property (See Exhibit C.17)
Soil borings at 6-, 25-, 33, and 80-feet from 0. Hydric soils were present from 0-80 feet, elevation 682.01). At 80 feet soils changed from wet or moist to dry without mottles (See Exhibit C.18)
Vegetation was hydric from 0-80 (elevation 682.01). At 80 feet vegetation changed from hydric to invasive, exotic species: poison ivy, buckthorn, honeysuckle (See Exhibit C.19).
Physical indicators from 0-80 (elevation 682.01) were exposed tree roots (all trees), drift lines 30 (elevation 677.92 – 679.41) and 33 feet from 0, debris caught on vegetation from flowing water, water stain on 3-trunk cottonwood with exposed roots elevation 682.73) and an erosion line at 85 feet (elevation 683.61 at the bottom) (See Exhibit C.01)
Biological indicators from 0-80 (elevation 682.01) were shallow root systems of trees, multiple trunks of trees (base of 3-trunk cottonwood without exposed roots elevation 682.73), an adventitious root, buttressed roots.
(See Exhibit C.01)

Bob Rolle property
Transect 1---600 feet from north end of property (See Exhibit C.20)
No soil borings were taken due to presence of naturally-occurring rock riprap and presence of bedrock
Vegetation was hydric from 0-33 feet inland (elevation 686.3) with the exception of roses (elevation 683.18) (See Exhibit C.21).
Physical indicators from were bleaching on lower portion of some tree trunks and possible water stain on natural riprap from 0-approximately 30 feet. The staining was very difficult to see that day as it was very cloudy with periods of light rain, so we could not survey them. We did take photos of the riprap and those photos show three distinct stains. Trees had exposed roots.
Biological indicators from 0-33 (elevation 686.3) feet inland were one tree with pipe elbow roots was noted at water level that day per Bob Rolle; tree had shallow root systems, and we found 2 trees with buttressed roots.
(See Exhibit C.22)

Transect 2---1150 feet from north end of property (See Exhibit C.23)
No soil borings were taken due to presence of naturally-occurring rock riprap and presence of bedrock
Vegetation was hydric from 0-26 feet inland (elevation 683.61) (See Exhibit C.24) We also noted a cedar tree @ 26 feet at the top of what we thought might be a light stain. Francis Ogden asked to have this cedar tree noted and asked us to learn what type of cedar it is. It is an eastern red cedar that has exposed, shallow roots and the photo shows that it is located at the top of the light water stain.
Physical indicators from 0-26 (elevation 683.61) trees had exposed roots from 0-19 feet, debris line at 14-16 feet from 0. Again, we photographed the natural riprap for water stains, but could not survey because of the weather.
Biological indicators from 0-26 feet (elevation 683.61) trees had shallow root systems. Bob Rolle asked that we note two trees at the water line that day that had pipe elbow roots.
(See Exhibit C.25)

Kinnickinnic Park
Transect 1----Slough area from main river channel to area next to park picnic area (See Exhibit C.26)
Borings showed hydric soils from 0-300 feet inland (See Exhibit C.27)
Vegetation was all hydric from 0-224 feet inland (elevation 682.8) (See Exhibit C.28)
Physical indicators from 0-older trees had exposed roots, and water stain on tree trunks. We did see debris lines, but they were interrupted. We also saw washmarks from higher water levels. The debris lines and washmarks were not surveyed as these indicators did not have enough permanence because the sandy areas of this artificial delta are heavily used by the public.
Biological indicators from 0-175(at SE edge of former Corps dredge material disposal area) trees had shallow root systems and multiple trunks. We also observed adventitious roots on the willows.
(See Exhibit C.29)

Transect 2---pier area
No soil borings vegetation inventories taken as the water stains on rocks at landing and erosion line north of the pier were the focal point of this transect.
Physical indicator is the water stain on the artificial riprap at the boat landing and on the natural riprap north of the pier (elevation 682.20 top of upper dark stain, elevation 681.84 bottom of upper dark stain).
Biological indicator is vegetation growth immediately above natural riprap north of pier (elevation 682.18)
(See Exhibit C.30)

Prescott
Transect 1---northern portion of city-owned property-Naberson is non-riparian landowner across on Lake Street (See Exhibit C.31)
Borings showed hydric soils from 0-30 feet (elevation 681.30 bottom of erosion line at base of slope) (See Exhibit C.32)
Vegetation was hydric from 0-30 feet (elevation 681.30), at 20 feet vegetation exotic species began to mix with hydric species (See Exhibit C.33)
Physical indicators from 0-32 were, exposed tree roots (elevation 682.41 top of exposed roots were above erosion line), a drift line at 10 feet from 0, a small erosion line at 18 feet from 0, a larger, more pronounced erosion line at 30 feet from 0, possible water stain on rocks north of transect, took photos, but could not survey because of weather that day—stain surveyed on July 13, 2005 (elevation 682 top of light stain)
Biological indicators from 0-32 feet were shallow root systems, trees with multiple trunks, trees with adventitious roots (exposed) at 30 feet at erosion line (elevation 681.30).
(See Exhibit C.34)

Transect 2---at south boundary line of city property (See Exhibit C.35)
Soil photos/chart (See Exhibit C.36)
Hydric vegetation from 0-29 feet (elevation 681.16 bottom of erosion line)(See Exhibit C.37)
Physical indicators 0-29 (elevation 681.16) feet were trees with exposed roots (surveyed base of tree at 25 feet-elevation 682.86), a debris line at 20 feet, and an erosion line at 29 feet at the base of the slope.
Biological indicators 0-29 feet (elevation 681.16) were trees with shallow roots systems, adventitious roots, and multiple trunks. (See Exhibit C.38)
(Note: the retaining wall downstream of this transect also had a water stain. However, the stain was only on the downstream half of the wall, not the upstream half. Given that the water is present on the entire length of the wall, but the stain was only on half; we did not survey the stain.)

Field Work Results

When we correlated the field data and the survey data, it showed that most of the physical and biological indicators began at the water line and ended in the general range of elevations 681 and 682. Considering the public input received at the public meetings that one (1) foot of elevation (vertical measurement) can make a difference of several lineal feet (horizontal measurement); we reviewed the indicators to find those that Chapter 40 considered excellent and those that were the most permanent and predominant. We were able to narrow our indicator range using the water stains on the barge dolphins-these were placed in conjunction with the King Power Plant in the 1960s, Mallalieu Dam abutments constructed 1935, Stillwater bridge earthen causeway in the 1930s and Kinnickinnic riprap placed in 1991. Given the age of these structures they are some of the most permanent and predominant indicators we found. Plus, the location of these structures also gave us almost the entire range of our study area. Again using the guidance in Chapter 40 to find the OHWM using the water stain, we found:

Stillwater bridge causeway, sloping rock, top of dark stain 682.20
Barge dolphins-top of light stain, bottom of upper dark stain is elevation 681.55
Mallalieu Dam-top of light stain, bottom of upper dark stain is elevation 681.51
Kinnickinnic riprap-top of upper dark stain is elevation 682.20, bottom of upper dark stain is 681.84

August 31, 2005 meeting (See Exhibit D.01)

Additional Information Received To Date

OHWM Determination conducted by Barr Engineering on behalf of and submitted by Mr. William Tilton as part of a county permit application (See Exhibit E.01). The Barr OHWM references portions of Ch. 40 of the Waterway and Wetland guidebook as a reference for this determination and includes a survey map with existing vegetation identified and photos. A review of the Barr OHWM determination shows that the predominant type of vegetation below elevation 682 is hydric and trees have multiple trunks as noted on the survey map. The map indicates the oak at this location is the exception, which is not unheard of in nature. Plants typically categorized as terrestrial may grow and remain healthy in a hydric environment due to lack of competition from other terrestrial plants according to DNR forestry staff. The determination did not show the "break" from predominatly hydric vegetation to terrestrial as defined in Diana, "...the destruction of terrestrial vegetation." This determination also references the portion of the guidebook concerning mosse which states, "...mosses which are located on exposed rocks, stumps, tree roots, etc, are usually considered terrestrial and the lowermost elevation of these mosses is a good indicator of the OHWM." What the determination does not include is the remainder of the guidebook text about mosses which states, "...Some water mosses (e.g. Drepanocladus) form long strings and are aquatic and should not be used as indicators of the OHWM." The determination did not include any moss identification information. As requested by Mr. Tilton, Department staff have provided additional information about types of mosses and their use as indicators of the OHWM (See Exhibit E.02). The determination does not include soil identification and sandy soils can be hydric as identified in the DNR OHWM transects. The water stain was not documented because it was described as "faint." The DNR OHWM evaluation documented by photo the water stains at the Rolle property, even though on the field day the stains were faint due to weather conditions. The DNR photos, however, show the stains very clearly. The determination did not include any information about permanent and predominant OHWM indicators. This determination did not appear to address the guidance in Chapter 40 of the guidebook that

states, "...that the ordinary high water mark is not at the edge of open water adjacent to aquatic vegetation but on the bank or shore where terrestrial vegetation either begins or is destroyed."

Based on the review of the Barr OHWM determination, Department staff conclude that setting 676-677 as the OHWM at the Tilton property is incorrect and should not be used.

The Department also received an OHWM elevation of 677 as set by the city of Hudson. Field data to support 677 was requested, but not received. The city of Hudson did send an email explaining that "WisDNR" had advised Hudson to use 676 as the OHWM. Hudson used the criteria in NR 118 to establish the OHWM. Hudson established 677 at the Nor Lake property, and that Hudson determines the OHWM on a case-by-case basis. Department staff requested the identify of the "WisDNR" who used 676 as OHWM, what criteria in NR 118 was used to locate an OHWM, and requested the field data a second time. As the Department requests for field data, NR 118 criteria, and "WisDNR" staff have not been received, Department staff conclude that setting 676 or 677 as the OHWM in Hudson is incorrect and should not be used (See Exhibit E.03).

The Department has received correspondence identifying what the OHWM elevation should be. Included is the correspondence received by E. Post to date. (See Exhibit E.04).

Recommendations

Based on the facts that:

- water levels in the St Croix have been documented to be at generally 681 for 30 days over a 20-year record,
- the incompleteness of the OHWM determinations of 677 by Hudson and 676-677 by Barr Engineering renders these proposed OHWM insupportable
- the presence, the variety of indicator types, and the consistency of the various indicator types of biological and physical indicators in this reach of the river; beginning at the water, even at low control pool of elevation 675, up to a general range of elevation 681 to 682,
- the permanence and predominance of the water stains found spanning almost the entire stretch of river known as the "state zone," and
- the guidance in Chapter 40 of the Waterway and Wetland Handbook which states, "...The Court then added the wording 'on the bank or shore' and the word 'terrestrial' to the Lawrence definition to emphasize that the ordinary high water mark is not at the edge of open water adjacent to aquatic vegetation but on the bank or shore where terrestrial vegetation either begins or is destroyed;"

Department staff recommend that the OHWM for the St Croix River, aka, Lake St Croix, be found at elevation 681.5, mean sea level, 1912 Adjustment, Corps datum in the lower 25 miles of the river in the "state zone."

Attachments -List of Exhibits
-List of Reference Materials

Field Work References

Munsell Soil Color Charts, 1998
Field Indicators of Hydric Soils in the U. S., Version 4, USDA/NRCS/Wetlands Science Institute and Soils Division, March 1998
Wetland Plants and Plant Communities of MN & WI, Second Edition, Eggers & Reed, 1997
Forest Communities and Habitat Types of Central/Southern/Northern Wisconsin, Kotar & Burger, 1996
Wildflowers and Weeds, Courtenay & Zimmerman, 1972

References

Surface Water Resources of St Croix County, Wisconsin Conservation Department, 1961
Surface Water Resources of Pierce County, Department of Natural Resources, 1971
Soil Survey of Pierce County, USDA/SCS, May 1968
Soil Survey of St Croix County, USDA/SCS, July 1978
The St Croix River Water Quality Management Plan, DNR, 1994
Lower St Croix National Scenic Riverway, River Stewardship Guide, MN/WI Boundary Area Commission, December 1994
The State of the St Croix Basin, DNR, March 2002
Cooperative Management Plan-Lower St Croix National Scenic Riverway, U.S. Dept of Interior/National Park Service-MN DNR-WI DNR, January 2002

A01

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Scott Humrickhouse, Regional Director

West Central Region Headquarters
1300 W. Clairemont Avenue
P.O. Box 4001
Eau Claire, Wisconsin 54702-4001
Telephone 715-839-3700
FAX 715-839-6076
TTY Access via relay - 711

August 18, 2004

Attached List:

Subject: Setting the Ordinary High Water Mark for Lake St. Croix.

Dear Partners in Resource Protection.:

As many of you are aware, the Natural Resources Board recently passed the revisions to Wisconsin Administrative Code NR 118. This is the code that acts as a regulatory guide to protect shoreland along the Lower St. Croix river. As part of the revision process, and to assist municipalities with administering this part of their ordinances, the Department agreed to proceed with developing an Ordinary High Water Mark (OHWM) for the Lower St. Croix River.

This letter formally invites you to participate in that process. We have worked cooperatively with you in the past to make sound regulatory decisions that benefit the resource and the public that enjoys that resource and look forward to your involvement in this process. Our tentative plan for Declaring the OHWM is:

August-September 2004:	conduct scientific field work with outside partners (2 locations)
September 2004:	attend the LSC Partnership Team Meeting to invite their involvement
October 2004:	attend LSC Planning Commission meeting to invite their involvement
October 2004:	publish news releases to invite public involvement and identify meeting dates
Dec – Feb:	hold public meetings along the LSC river.
May – June 2005;	conduct more field work with outside partner involvement (~3 new locations)
June-July2005:	develop field report identifying OHWM findings, share with partners, compare to historical elevations and data gathered from the public.
July – August 2005:	conduct declaratory public hearing

As I have identified, we have scheduled two field data collection days for this late summer/fall and would invite your involvement in collecting the necessary vegetation, soils and topographic data to aid in the OHWM determination. The first field data collection day is scheduled for August 31, at the Lake Mallalieu Dam, beginning at 10:00 am. The second field data collection date for this calendar year is September 7, at Kinnickinnic State Park, beginning at 10 am. For more information on the field days, please contact Eunice Post at our Baldwin Office 715-684-2914, ext. 119 or eunice.post@dnr.state.wi.us .

The Department will plan to go into more detail with you concerning the Declaratory Ruling process during these field data collection days and at subsequent meetings. If you are unable to attend 8/31 or 9/7 we understand and will work to keep you informed of the process and where we are at on a regular basis.

Gregg Breese will be the project coordinator for the Department. If you have questions or comments at anytime during this process, please don't hesitate to contact him. Gregg can be reached by email at gregory.breese@dnr.state.wi.us . Our goal throughout this process is to invite involvement by anyone

A.01

interested, share all the information we have, use the best available science to declare an accurate OHWM, and put in place the necessary tools that allow municipalities to benefit from the information.

The Department looks forward to working with you on this project. I ran across this quote and felt it fit into the project we're about to embark on: "Tug on anything at all and you'll find it connected to everything else in the universe." John Muir

Sincerely,

Daniel G. Baumann, P.E.
Water Leader
West Central Region

A.02
1 of 3

UPON PETITION TO THE
DEPARTMENT OF NATURAL RESOURCES

In the matter of the applicability of ss. 281.11, and 30.10(4)(b), Stats., s. NR 320.03(12), Wis. Adm. Code, the Wisconsin Constitution, and Wisconsin common law in relation to determining the elevation of the ordinary high water mark (OHWM) in and along the portion known as the "state zone" of the St. Croix River, a navigable water of the state of Wisconsin.

The Wisconsin Constitution, statutes, rules, and common law provide as follows:

Pursuant to s. 281.11, Stats., the Department of Natural Resources shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Pursuant to the duty of the Department to protect, maintain and improve the management of the waters of the state, s. 30.10(4) (b), Stats., provides that the boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and water shall be determined in conformity to the common law so far as applicable.

Pursuant to Wisconsin common law and the Wisconsin constitution, the state exercises direct authority over navigable waters of the state through the public trust doctrine, which provides that the state holds all natural navigable waters in trust for the public. Also pursuant to Wisconsin common law, the scope of the public trust doctrine extends landward to the ordinary high water mark (OHWM) of all natural navigable waterbodies. *State v. Trudeau*, 139 Wis. 2d 91 (1987)

Wisconsin common law and s. NR 320.03(12), Wis. Adm. Code, define the OHWM as the point on the bank or shore up to which the presences and action of water is so continuous as to leave a distinct mark either by erosions, destruction of terrestrial vegetation or other easily recognizable characteristics. *Diana Shooting Club v. Husting*, 156 Wis. 261, 272 (1914)

Pursuant to s. 227.41, Stats., any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties, and the resulting declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

As the state agency charged with determining the scope of the public trust doctrine in waters of the state, the Department of Natural Resources is an interested person who may petition for a declaratory ruling with respect to the determination of the elevation of the OHWM in and along the portion known as the "state zone" of the St. Croix River.

The grounds for this petition are to determine the applicability of the above statutes, rule, and constitutional and common law in determining state jurisdiction, the scope of the public trust doctrine, and the elevation of the OHWM in and along the portion known as the "state zone" of the St. Croix River, because of the following state of facts:

The Department received public comments questioning the accuracy of the elevations of the existing OHWMs in and along the St Croix River, and responded by offering to re-evaluate the elevations of the OHWM in and along the portion of the St. Croix River commonly referred to as the "state zone."

The portion of the St. Croix River known as the "state zone" begins at Prescott, Wisconsin and runs north to end approximately at the Arcola sandbar which is slightly more than three miles north of Houlton, Wisconsin.

Currently, the elevations of the OHWM in and along the "state zone" for the St Croix National Wild and Scenic River were determined and are established as:

687 mean sea level, 1912 Corps adjusted datum, Section 9, T26N, R20W, in the City of Prescott, Pierce County, Wisconsin

682 mean sea level, 1912 Corps adjusted datum, Marzoff property, Section 12, T28N, R19W, Town of Troy, St Croix County, Wisconsin

685.75 mean sea level, 1912 Corps adjusted datum, Union Pacific Railroad property, Section 24, T29N, R20W, City of Hudson, St Croix County, Wisconsin

The reasons for the requested ruling are:

The Department has received public comments questioning the accuracy of the elevations of the existing OHWMs and asking that the elevation of ordinary high water mark on the St Croix River be reduced from the current established elevations to 675 mean sea level, 1912 Corps adjusted datum.

The following are the names and addresses of all other persons other than the petitioner upon whom it is sought to make the ruling binding:

All persons owning land that abuts the "state zone" portion of the St. Croix River as described above and their successors in interest.

Eunice Post
Department of Natural Resources
Baldwin Service Center
890 Spruce Street
Baldwin WI 54002

State of Wisconsin
County of Eau Claire
Signed and sworn to (or affirmed) before me on 8-19, 2005 by Eunice Post.

Mary M Tradette
Signature of notarial officer
Title: Notary Public
My commission expires: 1-11-09 (Seal, if any)

A.03

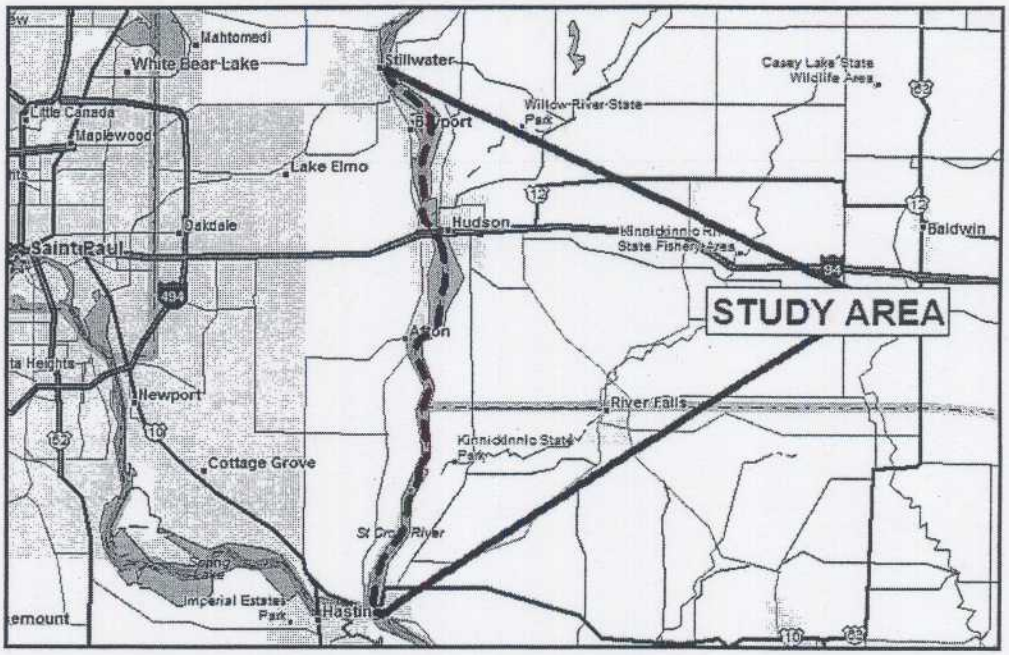
NEW
West Central Region Headquarters - Eau Claire
Wisconsin Department of Natural Resources
PO Box 4001 Eau Claire, WI 54702-4001
Phone: (715) 839-3700 TDD: (715) 839-2786
www.dnr.state.wi.us
www.wisconsin.gov

FOR RELEASE: 01/12/05~~12/22/04~~
CONTACT: Robert Baczynski, Lower Chippewa Team Leader, Baldwin, 715/684-2914 ext. 115

SUBJECT: Meeting to Outline Ways to Establish Lake St. Croix Ordinary High Water Mark

EAU CLAIRE, Wis. – Methods the Department of Natural Resources is using to establish an ordinary high water mark for Lake St. Croix on the St. Croix River will be outlined during a series of meetings in Prescott and Hudson in January, 2005.

The goal of these sessions is to help people understand the processes being used to establish the ordinary high water marks. Sessions are scheduled from 6 to 8 p.m. Jan. 12 at the Prescott Emergency Medical Services Building, 1603 Pine St., Prescott as well as from noon to 2 p.m. Jan. 13 and from 6 to 8 p.m. Jan 13 at the St. Croix County Government Center, 1101 Carmichael Road, Hudson.



Bob Baczynski, Department of Natural Resources Lower Chippewa Basin Team leader said staff will explain the principles and laws defining an ordinary high water mark (OWHM), what needs to be done to establish an OHWM, and what OHWMs have been established for Lake St Croix to date

The following counties are in the West Central Region: Adams, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Pepin, Pierce, Portage, St. Croix, Trempealeau, Vernon, Wood.

The public affairs manager for the DNR West Central Region is: Dave Weitz - (715) 839-3715.

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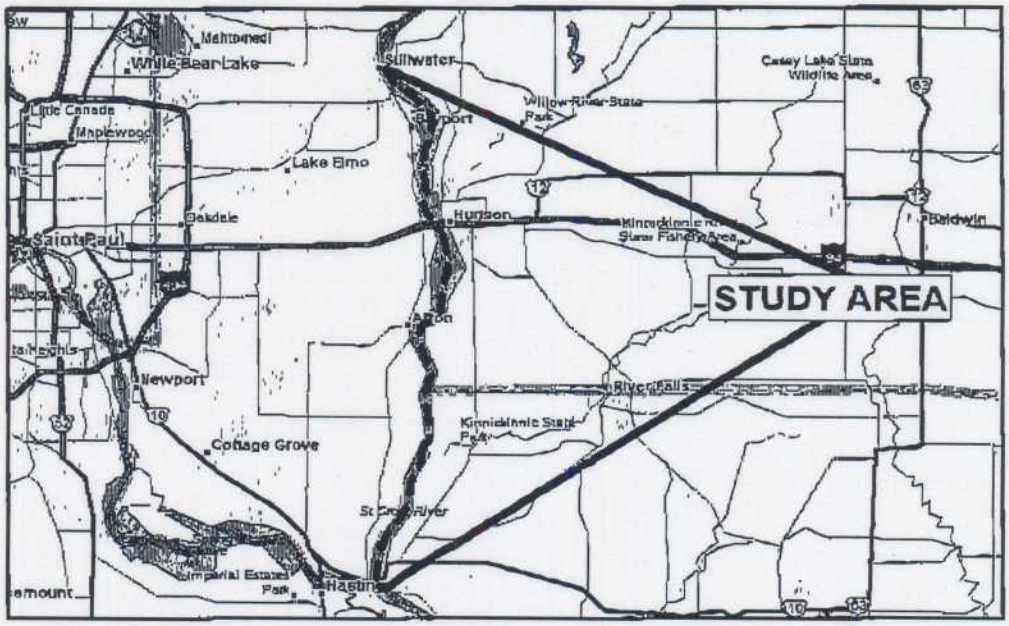
A.04

NEWS
West Central Region Headquarters - Eau Claire
Wisconsin Department of Natural Resources
PO Box 4001 Eau Claire, WI 54702-4001
Phone: (715) 839-3700
www.dnr.state.wi.us
www.wisconsin.gov

FOR RELEASE: July 7, 2005
CONTACT: Robert Baczynski, Lower Chippewa Team Leader, Baldwin, 715/684-2914 ext. 115

SUBJECT: Meeting to Present Lake St. Croix Ordinary High Water Mark Findings

EAU CLAIRE, Wis. – The Wisconsin Department of Natural Resources has completed the field work phase of an effort to establish a Lake St. Croix Ordinary High Water mark and will present findings during meetings in Prescott and Hudson in month. The goal of these sessions is to help people understand the information collected at each of five locations sampled.



A finding for the Ordinary High Water Mark is often important to shoreland owners who want to do work on their property. The location of an Ordinary High Water Mark can influence which regulations a property owner must follow before any work in the shoreland zone is started.

Sessions are scheduled from 6 to 8 p.m. July 27 at the St. Croix County Government Center, 1101 Carmichael Road, Hudson as well as 6 to 8p.m. July 28 at the Prescott Municipal Building, Council Chambers, 800 Borner St., Prescott.

The following counties are in the West Central Region: Adams, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Pepin, Pierce, Portage, St. Croix, Trempealeau, Vernon, Wood.

The public affairs manager for the DNR West Central Region is: Dave Weitz - (715) 839-3715.

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ONLY ADD ORDINARY HIGH STUDY /

Bob Baczynski, Department of Natural Resources Lower Chippewa Basin Team leader said staff will present the findings from field work conducted last fall and this spring. In addition, staff will compare this information to historical elevations as well as data gathered from citizens. People can bring any additional information that they feel will aid in the Ordinary High Water Mark (OWHM) process for Lake St Croix.

"Department staff will be present to explain the process in detail, how the determination could apply to Lake St Croix and shoreland owners, as well as to answer any questions the public may have regarding the process," he said. Visitors to the sessions can meet the individuals who conducted the field work and find out when various aspects of the process will happen.

For further information, contact Bob Baczynski in Baldwin, at 715-684-2914, ext. 115.

-30-

A.05

NEWS
West Central Region Headquarters - Eau Claire
Wisconsin Department of Natural Resources
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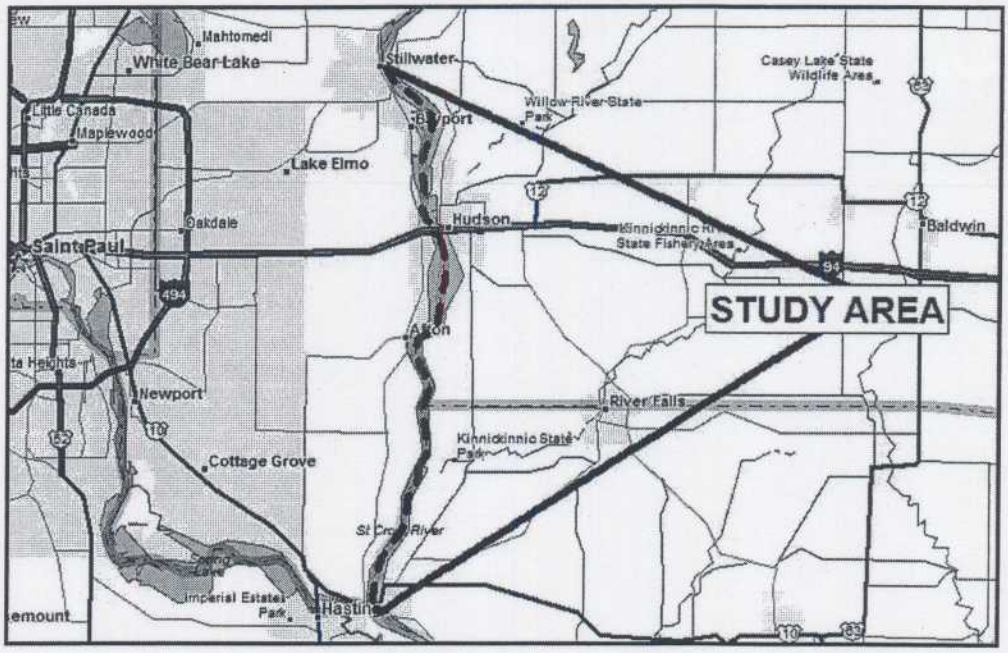
www.wisconsin.gov

FOR RELEASE: 08/25/2005
CONTACT: Robert Baczynski, Lower Chippewa Team Leader, Baldwin, 715/684-2914 ext. 115

SUBJECT: Meeting to Present Lake St. Croix Ordinary High Water Mark Findings

EAU CLAIRE, Wis. – SUBJECT: Hearing to Present Lake St. Croix Ordinary High Water Mark Findings

EAU CLAIRE, Wis. – The Wisconsin Department of Natural Resources will present results of its field work and analysis of water level records and other data, leading to a finding of the ordinary high water mark for Lake St. Croix at an August 31 hearing in Hudson. The main purpose of the hearing is to gather any additional records or information that may have a bearing on the final finding.



While flood scars and other indicators of surface water are found at many elevations because of flooding and other water level changes on Lake St. Croix, DNR field work finds the *ordinary high water mark* is at 681.5 feet (1912 adjusted COE datum) for approximately 25 miles of river. At this elevation, the physical and biological marks found by DNR are the most permanent and predominant. The ordinary high water mark is the point where public water begins and the starting point for measuring setbacks for homes and other structures from the river.

The hearing is scheduled at 6 p.m. August 31 at the St. Croix County Government Center, 1101 Carmichael Road, Hudson where the department will formally present this finding to an examiner and where the public will have opportunity to offer additional evidence.

For further information, contact Bob Baczynski at the Baldwin service center, 715-684-2914, ext. 115.

The following counties are in the West Central Region: Adams, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Jackson, Juneau, La Crosse, Marathon, Monroe, Pepin, Pierce, Portage, St. Croix, Trempealeau, Vernon, Wood.

The public affairs manager for the DNR West Central Region is: Dave Weitz - (715) 839-3715.

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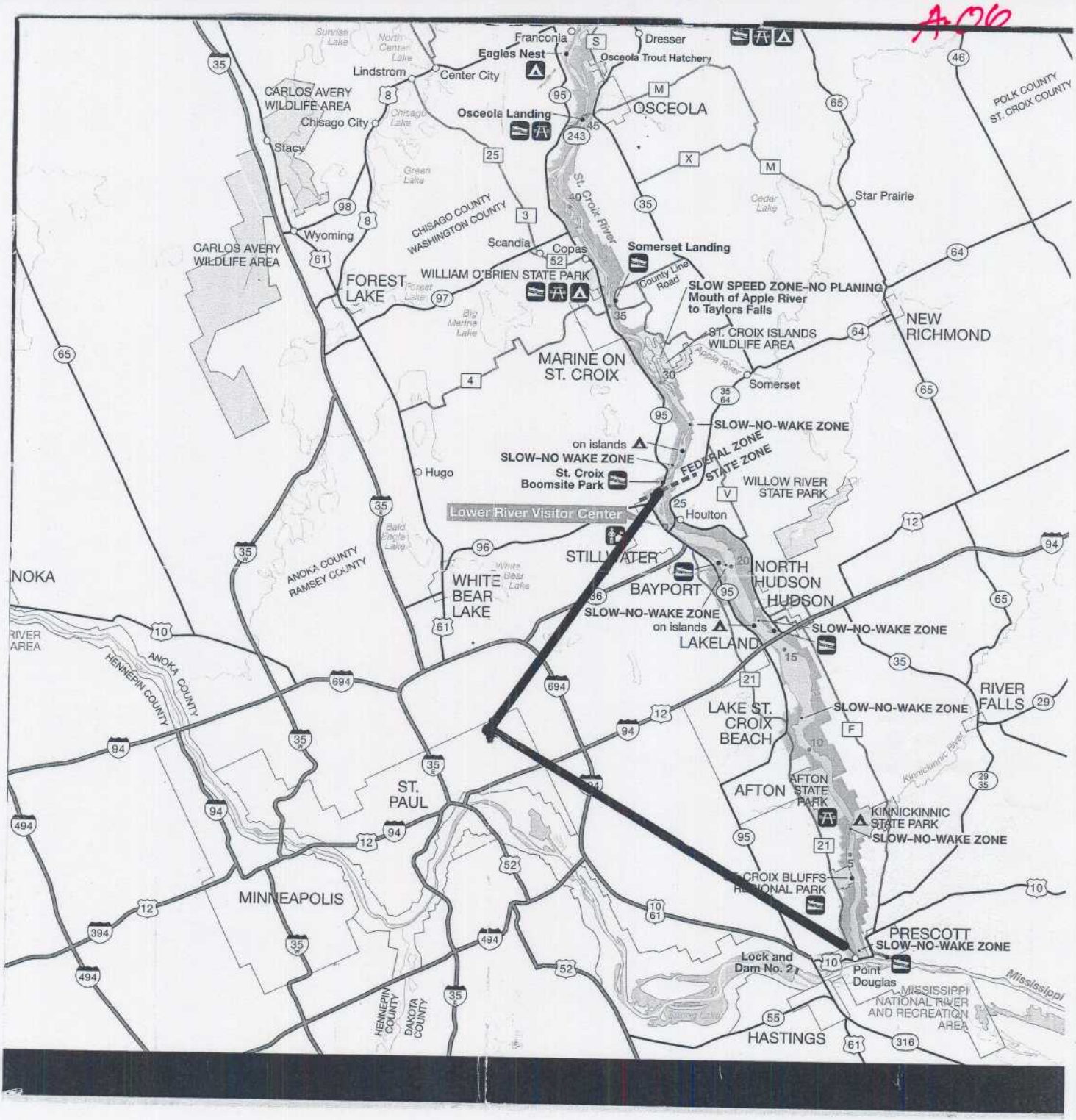
A-06


Franconia
Eagles Nest
Dresser
Osceola Trout Hatchery
Lindstrom
Center City
CARLOS AVERY WILDLIFE AREA
Chisago City
Osceola Landing
OSCEOLA
POLK COUNTY
ST. CROIX COUNTY
Stacy
Star Prairie
Wyoming
CHISAGO COUNTY
WASHINGTON COUNTY
Scandia
Copas
Somerset Landing
CARLOS AVERY WILDLIFE AREA
FOREST LAKE
WILLIAM O'BRIEN STATE PARK
County Line Road
SLOW SPEED ZONE–NO PLANING
Mouth of Apple River
to Taylors Falls
NEW RICHMOND
ST. CROIX ISLANDS WILDLIFE AREA
MARINE ON ST. CROIX
Somerset
SLOW–NO-WAKE ZONE
on islands
SLOW–NO WAKE ZONE
FEDERAL ZONE
STATE ZONE
St. Croix Boomsite Park
Hugo
WILLOW RIVER STATE PARK
Houlton
Lower River Visitor Center
STILLWATER
WHITE BEAR LAKE
BAYPORT
NORTH HUDSON
HUDSON
SLOW–NO-WAKE ZONE
on islands
LAKELAND
SLOW–NO-WAKE ZONE
ANOKA COUNTY
RAMSEY COUNTY
HENNEPIN COUNTY
ANOKA COUNTY
LAKE ST. CROIX BEACH
SLOW–NO-WAKE ZONE
RIVER FALLS
ST. PAUL
AFTON
AFTON STATE PARK
KINNICKINNIC STATE PARK
SLOW–NO-WAKE ZONE
CROIX BLUFFS REGIONAL PARK
MINNEAPOLIS
PRESCOTT
SLOW–NO-WAKE ZONE
Lock and Dam No. 2
Point Douglas
MISSISSIPPI NATIONAL RIVER AND RECREATION AREA
HASTINGS
HENNEPIN COUNTY
DAKOTA COUNTY

A.07

Wisconsin Department of Natural Resources

Wisconsin Lakes Directory - Pierce Co. (Alphabetic by County)

Select the letter corresponding to the **lake name**:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Named Lakes by County

Counties

Lake Name	County	Acres	Max.Depth ft	DNR Region	WBIC	Township	Range	Section	qq_section	q_sect
DEAD SLOUGH LAKE (Lower, Dead)	Pierce	300		WC	732200	T24N	R17W	07	NE	SE
GANTENBEIN LAKE	Pierce	88	5	WC	733200	T25N	R18W	30	SE	SE
GEORGE LAKE (Spring Valley)	Pierce	126	29	WC	2059800	T27N	R15W	06	NE	NE
GOOSE LAKE	Pierce	104		WC	732300	T24N	R17W	07	SW	NE
KINNICKINNIC POND, LOWER	Pierce	15	13	WC	2603000	T27N	R19W	01	SW	SW
KINNICKINNIC POND, UPPER	Pierce	18	9	WC	2603700	T27N	R19W	01	NE	SW
LAKE PEPIN*	Pierce/Pepin	19649		WC	731800	T22N	R14W	05	NE	SW
LAKE PEPIN - DEAD SLOUGH	Pierce			WC	732400	T24N	R17W	08	NE	SW
LAKE ST CROIX	Pierce	4668	60	WC	2601500	T26N	R20W	09	SE	SE
LILY POND	Pierce			WC	732000	T24N	R17W	16	SW	NW
LOWER KINNICKINNIC POND	Pierce	15	13	WC	2603000	T27N	R19W	01	SW	SW
MISS RIVER - POOL NO.3	Pierce			WC	733505	T25N	R18W	31	SE	NW
MISS RIVER - POOL NO.4	Pierce			WC	730405	T21N	R13W	02	NW	SE
MISS RIVER - UN SLOUGH	Pierce	300		WC	733100	T25N	R18W	31	NW	NE

MUD LAKE (Upper, Upper Mud)	Pierce	400		WC	732600	T24N	R18W	11	SE	SW
NUGGET LAKE	Pierce	116	50	WC	2053400	T25N	R15W	09	NW	NE
PEPIN, LAKE*	Pierce/Pepin	19649		WC	731800	T22N	R14W	05	NE	SW
PEPIN, LAKE - DEAD SLOUGH	Pierce			WC	732400	T24N	R17W	08	NE	SW
ST CROIX, LAKE	Pierce	4668	60	WC	2601500	T26N	R20W	09	SE	SE
UN LAKE	Pierce	75		WC	732375	T24N	R18W	11	NE	NE
UN LAKE	Pierce	1	4	WC	1888600	T24N	R17W	08	SE	NE
UN LAKE	Pierce	1	1	WC	1888700	T24N	R17W	09	SW	NW
UN LAKE	Pierce	4	3	WC	1888800	T24N	R18W	03	SW	NW
UN LAKE	Pierce	26	5	WC	1888900	T24N	R18W	03	SW	SE
UN LAKE	Pierce	2	5	WC	1889000	T24N	R18W	12	NW	NE
UN LAKE	Pierce	6	8	WC	2446300	T24N	R17W	09	SW	NW
UN LAKE	Pierce	14	5	WC	2446800	T24N	R18W	04	NE	NE
UN LAKE	Pierce	7	2	WC	1889800	T25N	R18W	33	SW	NW
UN LAKE	Pierce	22	2	WC	720950	T25N	R18W	30	NE	NE
UN LAKE	Pierce	40	5	WC		T25N	R18W	30		
UN LAKE	Pierce	14	5	WC	733000	T25N	R18W	31	NE	NW
UN LAKE	Pierce	2	2	WC	1889400	T25N	R18W	19	SW	SE
UN LAKE	Pierce	6	2	WC	1889500	T25N	R18W	30	NE	SE
UN LAKE	Pierce	6	2	WC	1889600	T25N	R18W	30	SE	SE
UN LAKE	Pierce	4	1	WC	1889700	T25N	R18W	33	SE	NW
UN LAKE	Pierce	1	5	WC	2446900	T25N	R18W	33	SW	SE
UN LAKE	Pierce	10	6	WC	1890300	T26N	R19W	32	NW	NE
UN LAKE	Pierce	1	5	WC	1890400	T26N	R19W	33	NW	SW
UN LAKE	Pierce	1	7	WC	1890500	T26N	R20W	15	SE	NE
UN LAKE	Pierce			WC	2446100	T26N	R17W	07	SE	NE
UN LAKE	Pierce	1	3	WC	2503600	T27N	R19W	01	SE	SE
UN SPRING	Pierce	6	4	WC	2043200	T24N	R17W	08	NE	SE
UN SPRING	Pierce	1	5	WC	2043300	T24N	R18W	12	NW	NW
UN SPRING	Pierce			WC	2445400	T25N	R17W	22	SW	SW
UPPER KINNICKINNIC POND	Pierce	18	9	WC	2603700	T27N	R19W	01	NE	SW

Key:

NE = Northeast, NO = Northern, SC = South Central, SE = Southeast, and WC = West Central DNR Region
q = Quarter, qq = Quarter of a Quarter of a square mile Section
(*) = Lake in two counties and counted in another County, and
UN = Un-Named such as un-named lake, spring, pond, or etc.

WBIC = DNR assigned 7 digit number to each waterbody in Wisconsin.

Produced By: Wisconsin DNR, Bureau of Fisheries Management and Habitat Protection.
For comments corrections or updates contact: James Vennie Lake Data Coordinator 608-266-2212

Fish Wisconsin Page || Fisheries Management and Habitat Protection Home ||
Lakes Partnership DNR Home

Last Revised: Friday February 28 2003

Top of Page || Home || Search || Feedback

A.08

Wisconsin Department of Natural Resources

Wisconsin Lakes Directory - St. Croix Co. (Alphabetic by County)

Select the letter corresponding to the **lake name**:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Named Lakes by County

Counties

Lake Name	County	Acres	Max.Depth ft	DNR Region	WBIC	Township	Range	Section	qq_section	q_sectio
UN LAKE (Amschler)	St. Croix	13		WC	2597300	T31N	R17W	17	SW	NW
ANDERSON SPRINGS	St. Croix	2	2	WC	2608400	T30N	R18W	17	NE	NE
APPLE FALLS FLOWAGE	St. Croix	39	40	WC	2614200	T31N	R19W	22	NW	SW
BASS LAKE	St. Croix	417	35	WC	2450500	T30N	R19W	23	NW	SE
BASS LAKE	St. Croix	9	10	WC	2450600	T31N	R19W	10	SE	NW
UN LAKE (Bass)	St. Croix	6	8	WC	2597500	T31N	R19W	10	SE	NW
BASS LAKE, NORTH	St. Croix	33		WC	2485500	T30N	R19W	11	NE	SE
BIERBRAUER LAKE	St. Croix	55		WC	2453200	T31N	R17W	04	SE	NW
BRIGHT LAKE	St. Croix	6		WC	2455100	T30N	R19W	21	NW	SW
BRUSHY MOUND LAKE	St. Croix	13	5	WC	2455400	T30N	R18W	12	NW	SE
BURKHARDT MILL POND	St. Croix	100	38	WC	2607600	T29N	R19W	10	NE	NW
BUSHNELL LAKE	St. Croix	17	12	WC	2606300	T29N	R17W	03	SE	SE
BUSHY LAKE	St. Croix	28	10	WC	2072600	T30N	R15W	05	SW	NE
BUSHY LAKE, LITTLE	St. Croix	6	4	WC	2072400	T30N	R15W	04	NW	SW
CASEY LAKE	St. Croix	28	12	WC	2606700	T30N	R17W	35	SW	NW
CEDAR LAKE	St. Croix	1107	28	WC	2615100	T31N	R18W	02	SW	NE
UN LAKE (Demulling Pond)	St. Croix	3		WC	2504930	T31N	R18W	05	NE	SE
DRY DAM LAKE	St. Croix	28	4	WC	2461600	T29N	R19W	01	SW	NE

EAST TWIN LAKE	St. Croix	65		WC	2462300	T29N	R18W	29	SE	SE
UN LAKE (Erickson)	St. Croix	52		WC	2597700	T31N	R17W	30	SE	NE
FALLS LAKE, LITTLE	St. Croix	172	18	WC	2607400	T29N	R19W	08	SW	NE
GEORGE LAKE* (Spring Valley)	St. Croix/Pierce	126	29	WC	2059800	T27N	R15W	06	NE	NE
GLEN LAKE	St. Croix	84	38	WC	2071700	T29N	R15W	11	NW	SE
GOOSE POND	St. Croix	14	2	WC	2609000	T31N	R17W	33	SE	SE
UN LAKE (Hammond Pond)	St. Croix	1		WC	2503950	T29N	R17W	28	SW	NE
HARMIN LAKE	St. Croix	17	6	WC	2612500	T31N	R15W	06	SE	SW
HATFIELD LAKE	St. Croix	90	9	WC	2468200	T31N	R18W	25	SE	SW
HUNTINGTON FLOWAGE	St. Croix	58		WC	2616950	T31N	R18W	11	NE	NE
UN LAKE (Kruizenga)	St. Croix	1		WC	2597900	T31N	R17W	05	SE	NW
LAKE MALLALIEU	St. Croix	270	17	WC	2607100	T29N	R20W	24	SW	NW
LEVESQUE SPRING	St. Croix	2	6	WC	2614400	T30N	R19W	01	SW	NW
LITTLE BUSHY LAKE	St. Croix	6	4	WC	2072400	T30N	R15W	04	NW	SW
LITTLE FALLS LAKE	St. Croix	172	18	WC	2607400	T29N	R19W	08	SW	NE
LONG POND	St. Croix	9		WC	2478500	T30N	R18W	13	NE	NW
LUNDY POND	St. Croix	22		WC	2480400	T30N	R18W	22	NE	SW
UN LAKE (Lundy Pond South)	St. Croix	1		WC	2598000	T30N	R18W	22	SE	SW
MALLALIEU, LAKE	St. Croix	270	17	WC	2607100	T29N	R20W	24	SW	NW
MCCLURE FLOWAGE	St. Croix	22		WC	2614750	T31N	R18W	14	NE	NW
MOUNDS POND	St. Croix	57	37	WC	2607800	T29N	R19W	02	NW	SE
NEW RICHMOND FLOWAGE	St. Croix	236	15	WC	2608800	T31N	R18W	36	SE	SW
NORTH BASS LAKE	St. Croix	33		WC	2485500	T30N	R19W	11	NE	SE
OAK RIDGE LAKE	St. Croix	149		WC	2486800	T31N	R17W	09	NE	SW
PERCH LAKE	St. Croix	43	63	WC	2488300	T30N	R19W	28	SW	SW

PINE LAKE	St. Croix	107	21	WC	2489700	T29N	R17W	01	NE	NE
PINE LAKE	St. Croix	89	19	WC	2489800	T31N	R19W	10	SW	NW
UN LAKE (Radtke Pond)	St. Croix	2		WC	2504370	T30N	R19W	19	SW	NW
RIVERDALE FLOWAGE	St. Croix	75	20	WC	2614600	T31N	R18W	31	SW	NE
LAKE ST CROIX*	St. Croix/Pierce	4668	60	WC	2601500	T26N	R20W	09	SE	SE
SHANK LAKE	St. Croix	6		WC	2496200	T29N	R19W	12	SE	SW
SOMERSET FLOWAGE	St. Croix	83		WC	2614250	T30N	R19W	03	NW	NE
SQUAW LAKE	St. Croix	129	32	WC	2499000	T31N	R18W	08	SE	SE
STRAND LAKE	St. Croix	21	16	WC	2499600	T31N	R18W	22	SE	NE
THREE LAKES	St. Croix	85	5	WC	2501400	T29N	R18W	05	NW	NE
TURTLE LAKE	St. Croix	27	12	WC	2502800	T31N	R19W	24	SW	SE
TWIN LAKE, EAST	St. Croix	65		WC	2462300	T29N	R18W	29	SE	SE
TWIN LAKE, WEST	St. Croix	97		WC	2598900	T29N	R18W	29	NE	SE
UN LAKE	St. Croix	2	5	WC	2503700	T28N	R18W	15	NE	SE
UN LAKE	St. Croix	1	3	WC	2503800	T28N	R18W	15	NE	SE
UN LAKE	St. Croix	4	7	WC	2606750	T28N	R20W	13	NW	NE
UN LAKE	St. Croix	8	3	WC	2503900	T29N	R17W	12	NE	NE
UN LAKE (Hammond Pond)	St. Croix	1		WC	2503950	T29N	R17W	28	SW	NE
UN LAKE	St. Croix	3	5	WC	2504000	T29N	R18W	15	NE	NE
UN LAKE	St. Croix	3	5	WC	2606200	T29N	R17W	11	SW	NW
UN LAKE	St. Croix	12	10	WC	2606400	T29N	R17W	03	NE	SE
UN LAKE	St. Croix			WC	2071500	T29N	R15W	02	NW	SE
UN LAKE (Lundy Pond South)	St. Croix	1		WC	2598000	T30N	R18W	22	SE	SW
UN LAKE	St. Croix	2	5	WC	2072500	T30N	R15W	05	NE	SE
UN LAKE	St. Croix			WC	2073300	T30N	R15W	33	SE	SE
UN LAKE	St. Croix	1	7	WC	2504100	T30N	R16W	10	NE	SW
UN LAKE	St. Croix	1	6	WC	2504200	T30N	R16W	11	SW	SW
UN LAKE	St. Croix	3	5	WC	2504300	T30N	R16W	16	SW	NW
UN LAKE (Walker Pond)	St. Croix	5		WC	2504350	T30N	R17W	36	SW	NE
UN LAKE (Radtke Pond)	St. Croix	2		WC	2504370	T30N	R19W	19	SW	NW
UN LAKE	St. Croix	10	6	WC	2504400	T30N	R19W	26	SW	SE
UN LAKE	St. Croix	11	6	WC	2504500	T30N	R19W	26	SE	SW

UN LAKE	St. Croix	10		WC	2504590	T30N	R19W	35	SW	NW
UN LAKE	St. Croix	35	7	WC	2504600	T30N	R19W	35	NW	SW
UN LAKE	St. Croix	1	3	WC	2610100	T30N	R16W	32	SW	NE
UN LAKE	St. Croix	1	5	WC	2611300	T30N	R16W	01	SW	NE
UN LAKE	St. Croix	1	5	WC	2611400	T30N	R16W	01	NE	SE
UN LAKE	St. Croix			WC	2072300	T30N	R15W	03	SE	NW
UN LAKE	St. Croix			WC	2073200	T30N	R15W	28	NW	SE
UN LAKE	St. Croix			WC	2073800	T30N	R15W	22	SE	SW
UN LAKE	St. Croix	15	4	WC	2504700	T31N	R16W	36	NW	SE
UN LAKE	St. Croix	40		WC	2504730	T31N	R17W	10	NW	SW
UN LAKE	St. Croix	5	4	WC	2504800	T31N	R17W	32	NW	NW
UN LAKE	St. Croix	3	3	WC	2504900	T31N	R17W	32	NW	SW
UN LAKE (Demulling Pond)	St. Croix	3		WC	2504930	T31N	R18W	05	NE	SE
UN LAKE	St. Croix	2	8	WC	2505000	T31N	R18W	22	SW	NW
UN LAKE	St. Croix	6	4	WC	2505100	T31N	R18W	36	SE	SE
UN LAKE	St. Croix	3		WC	2505150	T31N	R19W	04	NW	SE
UN LAKE	St. Croix	4	4	WC	2505200	T31N	R19W	10	SW	NE
UN LAKE (Amschler)	St. Croix	13		WC	2597300	T31N	R17W	17	SW	NW
UN LAKE	St. Croix	2		WC	2597400	T31N	R19W	10	NW	NW
UN LAKE (Bass)	St. Croix	6	8	WC	2597500	T31N	R19W	10	SE	NW
UN LAKE (Erickson)	St. Croix	52		WC	2597700	T31N	R17W	30	SE	NE
UN LAKE (Kruizenga)	St. Croix	1		WC	2597900	T31N	R17W	05	SE	NW
UN LAKE	St. Croix	12	6	WC	2614700	T31N	R18W	15	SW	SE
UN LAKE	St. Croix		10	WC	2614900	T31N	R18W	11	NW	NE
UN SPRING	St. Croix	3	6	WC	2613800	T29N	R20W	02	NE	NE
UN SPRING	St. Croix	1	6	WC	2608000	T30N	R18W	21	SE	SW
UN LAKE (Walker Pond)	St. Croix	5		WC	2504350	T30N	R17W	36	SW	NE
WEST TWIN LAKE	St. Croix	97		WC	2598900	T29N	R18W	29	NE	SE

Key:

NE = Northeast, NO = Northern, SC = South Central, SE = Southeast, and WC = West Central DNR Region
q = Quarter, qq = Quarter of a Quarter of a square mile Section
(*) = Lake in two counties and counted in another County, and
UN = Un-Named such as un-named lake, spring, pond, or etc.
WBIC = DNR assigned 7 digit number to each waterbody in Wisconsin.

Produced By: Wisconsin DNR, Bureau of Fisheries Management and Habitat Protection.
For comments corrections or updates contact: James Vennie Lake Data Coordinator 608-266-2212

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Last Revised: Friday February 28 2003

Top of Page || Home || Search || Feedback || What's New?

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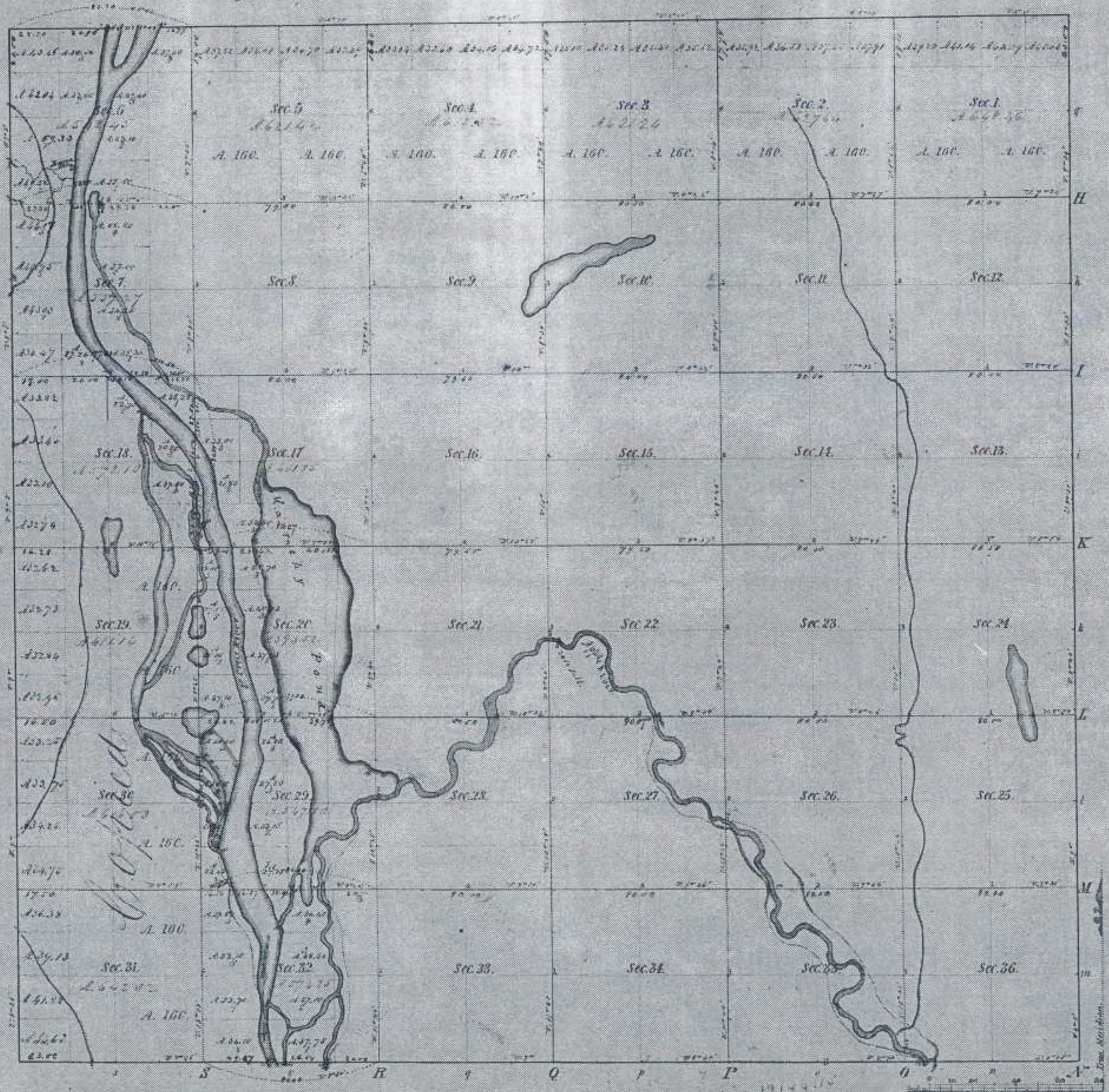
Township No. 31 N., Range No. 19 West 4th Mer.



Meanders of St. Croix River								
Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.
Left bank up stream.								
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			
Right bank down stream.								
[illegible]	[illegible]	[illegible]						
				Mls. Chs. lks.				

Total number of Acres 22,439.78

	Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Chs. Lks.	When Surveyed	When pd. for and ch. in the Sur. Gen. acct.
N W E	Township lines	James McMurch	May 22d 1847	12. 05. 30	August 1847	
	Subdivisions	Henry Madden	September 1st 1847	72. 47. 35	Oct. & Nov.	
S	Township line	H. A. Wiltse	May 22d 1847	6. 03. 00	August 1847	

The above Map of Township No. 31 North of Range No. 19 West of the 4th Principal Meridian Wisconsin Territory is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office,
Dubuque, April 1848.

Geo. W. Jones Sur. Gen.

(Copy)

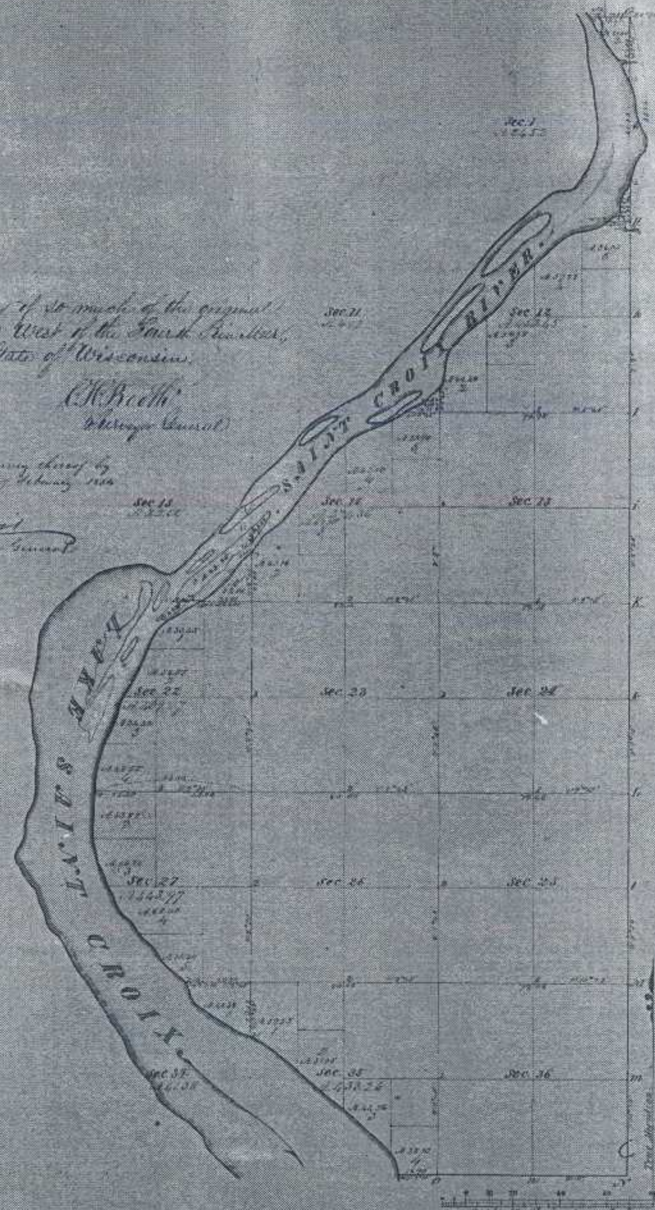
Township No. 30 N., Range No. 20 West, 4th Mer.

I certify that this map is a correct copy of so much of the original plat of Township No. 30 North of Range No. 20 West of the Fourth Meridian, as lies East of St. Croix River & Lake, in the State of Wisconsin.
Surveyor General's Office
Dubuque Aug. 5th 1850

C. H. Booth
Surveyor General

The Island in Sections 14, 15 & 22 is a correct representation of the Survey thereof by J. M. Marshall Dep. Sur. in pursuance of instructions of the 21st of February 1854 the field notes of which have been examined and approved.
Surveyor General's Office
Dubuque, August 21st 1855

Warren Lewis
Surveyor General



Meanders of the Left or East Bank of Lake Saint Croix & River								
Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.
11	N 50 E	2.75	21	S 82 E	3.25			
	N 15 E	3.10						
	North	2.00		S 60 E	10.00			
	N 32 E	7.43		S 52 E	13.85			
	N 38 E	6.76		S 45 E	22.00			
	N 33 E	6.00	22	S 5 E	3.46			
12	N 22 E	3.10						
				Mls. Chs. Lks.				
13	N 58 W	8.00	Total	7. 49.	47			
	N 3 E	8.77						
	West	4.50	Island in sections					
14	N 46 W	1.20	14, 15 & 22.					
	N 52 W	6.75	23	S 49½ W	11.17			
	West	3.90		N 87½ E	3.22			
	S 72 W	2.36		N 70 E	1.37			
	N 43½ W	3.26		N 47½ E	16.27			
	N 56 W	9.00						
	S 49 W	16.56		S 45 E	3.70			
	N 30 W	16.25		S 43 E	6.86			
	N 55 W	26.20		S 51 E	6.10			
	N 46 W	13.20		S 32½ E	3.19			
	N 13 W	17.10		S 62½ E	2.29			
15	N 42 W	8.10		S 52½ E	2.93			
	N 85 W	2.49		S 31 E	15.15			
	N 40 W	3.30		S 23½ W	1.27			
	S 70 W	6.10		S 49½ W	10.45			
16	S 22 W	8.25		S 32 W	11.69			
				S 49 W	12.55			
	N 66 W	10.90		S 51 W	11.96			
	S 70 W	6.50		S 41½ W	4.21			
	S 62 W	14.60		S 22½ W	3.33			
	S 36 W	27.50						
	S 54 W	13.60		Mls.	Chs.	Lks.		
	S 22 W	5.30	Total	1.	62.	33		
17	S 26 W	2.61						
	S 52 W	8.30						
	S 40 W	14.45						
18	S 52 W	6.35						
	S 42 W	17.86						
	S 30 W	5.70						
	S 33 W	8.47						
	S 20 W	5.64						
	S 22 W	28.20						
	S 10 W	4.63						
	S 2 W	16.50						
	S 11 W	16.60						
19	South	4.43						
	S 20 E	3.12						
	S 8 E	10.02						
	S 12 E	14.00						
	S 23 E	11.76						
	South	3.20						
	S 41 E	3.15						
	S 25 E	11.34						
	S 61 E	5.76						
	S 34 E	3.74						
	S 47 E	8.65						
	S 25 E	7.56						
20	S 56 E	7.76						
	S 27½ E	3.33						
	S 36 E	7.56						
	S 82 E	20.82						

Total number of Acres 6,147.51

	Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Chs. Lks.	When Surveyed	When Charged in the Sur. Gen's acct.
E. & S.	Township lines.	James McBride	May 22d 1847	7. 62. 14	October 1847	
N.	Township line.	A. A. Wilkie	May 22d 1847	17. 42	August 1847	
	Subdivisions.	John Lunn	August 30th 1847		November 1847	

The above Map of Township No. 30 North of Range No. 20 West, 4th Principal Meridian Wisconsin is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office,
Dubuque, January 14th 1848.

Geo. W. Jones Sur. Gen.

Township Nº 29 N., Range Nº 20 West, 4th Mer:

Meanders of the left bank of Lake Saint Croix.

Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.
1.	S 17 W.	10.30						
2.	S 81 E.	20.08						
	S 87 E.	9.90						
	N 36 E.	25.50						
	N 10 W.	7.36						
	N 21 E.	18.60						
3.	N 32 E.	11.75						
	N 25 W.	15.93						
	N 15 W.	7.36						
	N 30 W.	18.76						
	N 14 W.	22.07						
4.	N 12 W.	3.51						
	N 18 W.	7.10						
5.	N 8 W.	7.48						
	N 7 W.	25.03						
	N 12 E.	10.67						
6.	South	24.37						
	N 62 E.	40.01						
7.	N 25 E.	2.36						
	N 36 E.	14.43						
	South	7.02						
	N 12 E.	4.92						
8.	N 1 E.	17.92						
	N 2 E.	27.11						
	N 12 E.	7.87						
	N 27 E.	25.33						
	South	6.61						
	N 21 E.	3.89						
9.	N 40 E.	20.10						
	N 29 E.	18.00						
	N 15 E.	15.10						
	N 32 E.	25.00						
10.	N 92 E.	28.81						
	Mls. Chs.	Lks.						
Total	6 49	31						

I certify that this map is a correct copy of so much of the original plat of Township No. 29 North of Range No. 20 West of the Fourth Prin. Mer. as lies East of St. Croix Lake in the State of Wisconsin
Surveyor Generals Office
Dubuque, Augt. 6th 1850

C. H. Booth
Surveyor General

Total number of Acres 3,419.65

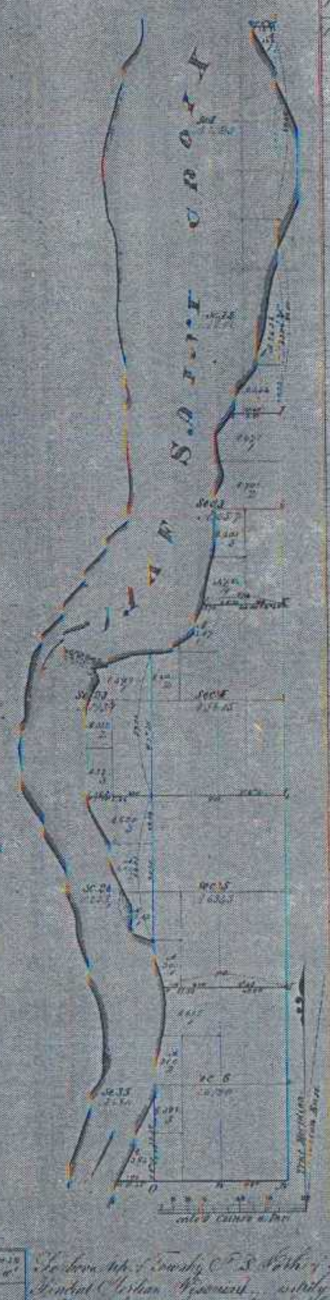
Surveys Designated.	By Whom Surveyed.	Date of Contract.	Amount of Surveys. M. Chs. Lks.	When Surveyed.	When Charged in the Surr. Genl's acct.
Township lines.	James M. Marsh	May 22d 1847	7 – 30 – 14	October 1847	
Subdivisions.	John Allard	August 30th 1847		November 1847	

The above Map of Township No. 29 North of Range No. 20 West, 4th Principal Meridian, Wisconsin is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor Generals Office
Dubuque, January 14th 1848.

Geo. W. Jones Sur. Genl.

N., Tw. No. 20 W. of 4th Mer.



Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.
[illegible]	N. 32° E.	23.45						
3	N. 23½ W.	3.00						
	N. 9½ W.	26.10						
	N. 25½ E.	9.80						
	N. 42½ W.	10.50						
4	N. 35½ W.	17.10						
	N. 41 W.	11.00						
	N. 7½ E.	7.00						
	N. 13 E.	11.10						
	N. 21 W.	17.10						
	N. 10½ E.	8.60						
	N. 15 W.	9.60						
	N. 12½ W.	17.30						
5	N. 7 E.	4.30						
	N. 25 W.	11.30						
	N. 52½ W.	16.90						
6	N. 85 W.	18.32						
	N. 50 W.	9.13						
	N. 71½ W.	15.50						
	N. 84 W.	7.10						
	N. 33 E.	5.10						
	N. 24 W.	13.10						
	N. 13 W.	12.70						
	N. 2 E.	19.60						
7	N. 11½ E.	3.20						
	N. 15 E.	8.00						
	N. 31 E.	16.20						
	N. 24½ E.	20.13						
	N. 32½ E.	16.00						
	N. 23 W.	6.50						
8	N. 65 E.	14.30						
	N. 27½ E.	12.32						
9	N. 18 E.	9.50						
	N. 6 E.	9.20						
	N. 7 W.	7.60						
	N. 18½ W.	23.00						
11	N. 25 W.	1.50						
	N. 26 W.	17.00						
	N. 31 W.	13.00						
12	N. 20½ W.	11.50						
	Mile	Chs.	Lks.					
Total	6.	15.	08					

…by … of … signal
20 West, Fourth Principal Meridian
… of Wis.

C. Beck
Surveyor General

Total … Acres … 7 …

… of Survey Chs. Lks.	Surveyed	…
2… 12… 1847		
… Jan. 1848		

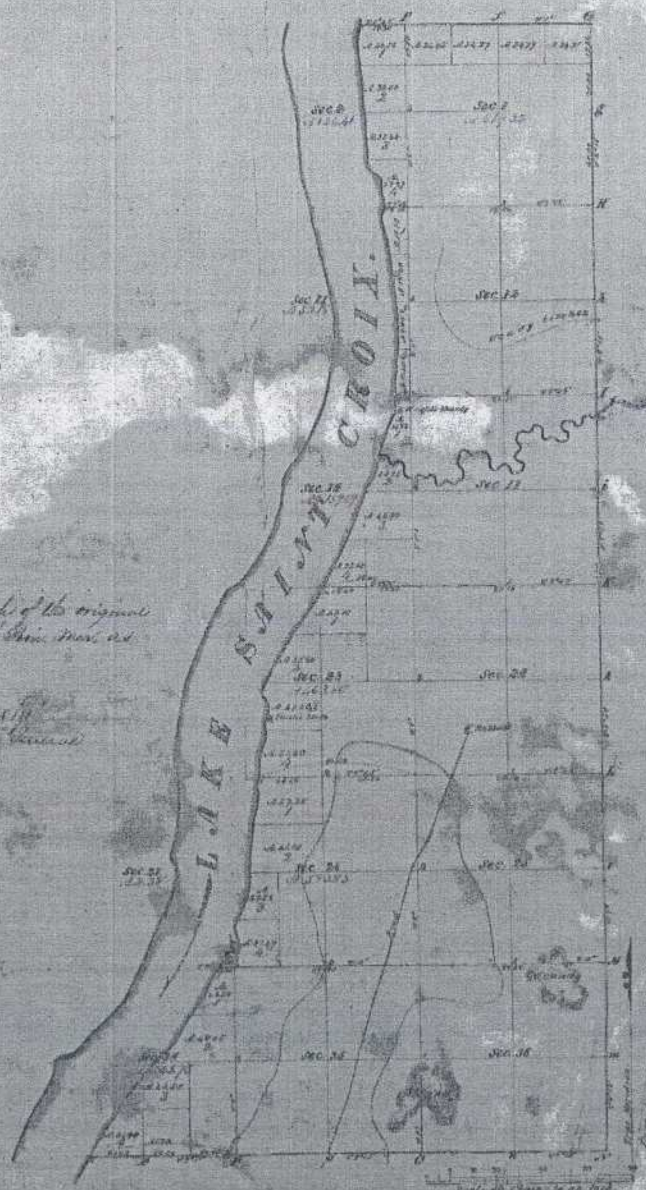
The above Map of Township No. 3 North of Range No. 20 West, 4th Principal Meridian, Wisconsin, … strictly conformable to the field notes of the survey thereof on file in this Office which have been examined and approved.

Surveyor General's Office
Dubuque, … 10th 1848

Geo. W. Jones … Sur. Genl.

(Copy)

Township No. 27 N., Range No. 20 West, 4th Mer.



Meanders of Lake Saint Croix								
Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.	Posts	Courses	Ch. Lk.
Down by Nor East bank								
1	[illegible]	7.00						
	[illegible]	22.50						
	[illegible]	31.00						
	[illegible]	10.50						
	[illegible]	5.20						
	[illegible]	7.00						
2	[illegible]	3.60						
	[illegible]	5.30						
	[illegible]	29.50						
	[illegible]	25.00						
3	[illegible]	25.00						
	South	2.50						
	[illegible]	6.50						
	[illegible]	3.58						
	[illegible]	13.20						
	[illegible]	7.00						
	[illegible]	6.00						
	[illegible]	5.50						
	[illegible]	7.70						
	[illegible]	10.00						
	[illegible]	5.00						
	[illegible]	7.60						
4	[illegible]	13.20						
	[illegible]	10.00						
	[illegible]	4.70						
	[illegible]	22.00						
	[illegible]	16.50						
	[illegible]	6.30						
	[illegible]	7.20						
	[illegible]	6.20						
	[illegible]	3.90						
	[illegible]	9.00						
5	[illegible]	2.00						
	[illegible]	2.60						
	[illegible]	5.70						
	[illegible]	6.00						
	[illegible]	3.00						
	[illegible]	3.60						
	[illegible]	4.75						
	[illegible]	2.30						
	[illegible]	7.00						
	[illegible]	13.20						
	[illegible]	4.20						
	[illegible]	3.00						
	[illegible]	4.00						
	South	2.00						
6	[illegible]	3.00						
	[illegible]	2.40						
7	[illegible]	7.50						
	[illegible]	20.00						
	[illegible]	11.50						
	[illegible]	5.00						
	[illegible]	17.50						
	[illegible]	14.00						
	[illegible]	6.00						
	[illegible]	10.50						
8	[illegible]	10.00						
	Mls. Chs. Lks.							
Total	6. [illegible] [illegible]							

I certify that this map is a correct copy of the [illegible] of the original plat of Township No. 27 N. of Range No. 20 West of the Fourth Prin. Mer. as [illegible] East of Lake St. Croix, in the State of Wisconsin.
Surveyor General's Office
Dubuque Aug. 6th 18[illegible]

C. K. Berry [illegible]
Surveyor General

Total number of Acres 6,113.36

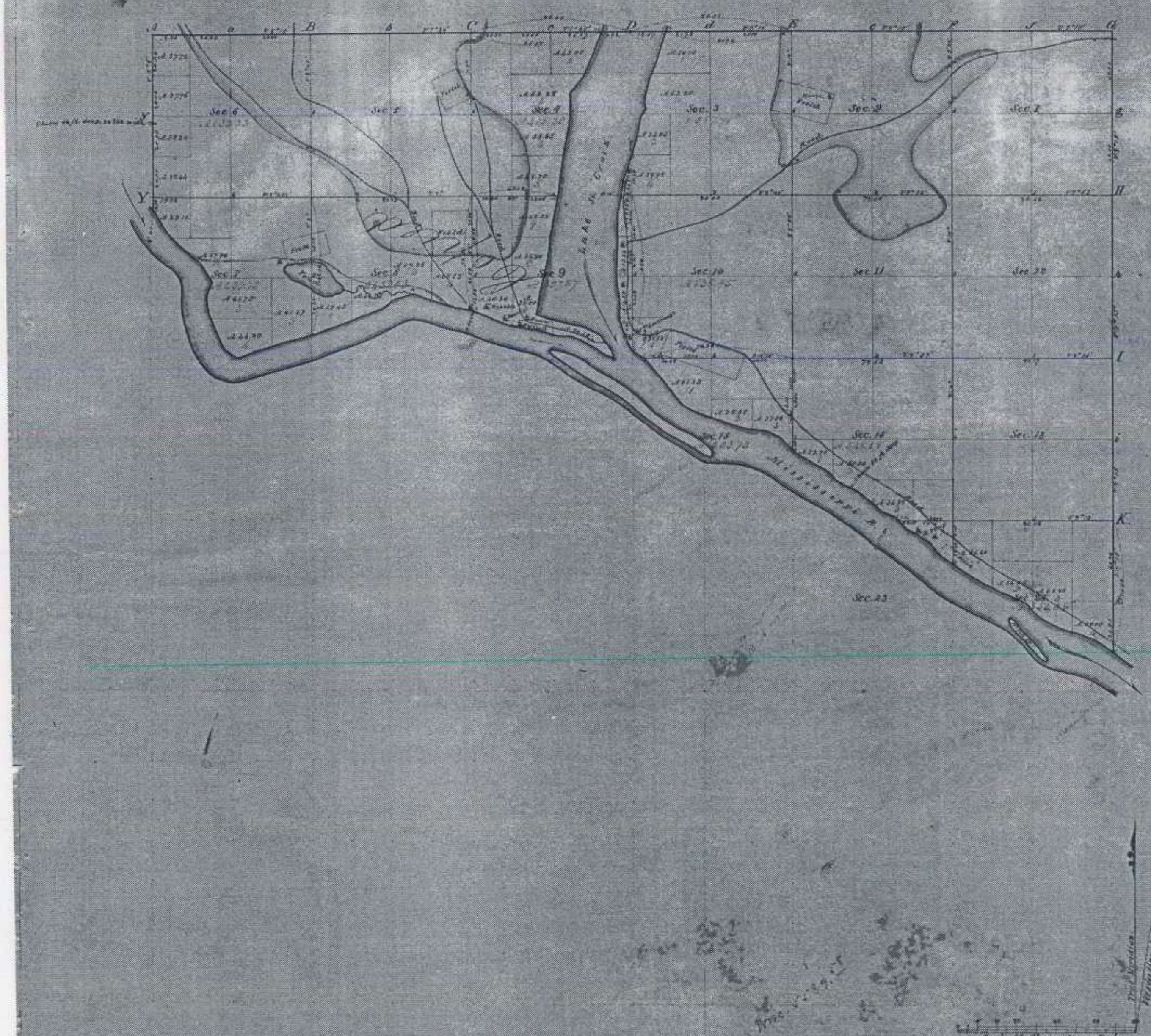
Surveys Designated	By whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lk.	When Surveyed	When Charged in the Surv. Gen. acct.
Township lines	James M. Marsh	May 22d 1847	9 - 72 - 47	September 1847	
Subdivisions	William [illegible]	July 1st 1848		November 1848	

The above Map of Township No. 27 North of Range No. 20 West, 4th Principal Meridian, Wisconsin, is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office,
Dubuque, [illegible] 20th 184[illegible]

Geo. W. Jones Sur. Genl.

Township Nº 26 N., Range Nº 20 West, 4th Mer.



Meanders of Mississippi River & Lake St. Croix.								
Posts	Courses	Chs Lks	Posts	Courses	Chs Lks	Posts	Courses	Chs Lks
Up left bank of river & lake.			11	N. 52 E.	3.40			
1	N. 17 W.	7.30		N. 70½ E.	35.00			
	N. 67 W.	10.00		N. 72 E.	5.00			
	N. 75 W.	8.00		N. 55 E.	8.30			
	N. 46½ W.	8.50		N. 73 E.	9.00			
	N. 61½ W.	7.00		S. 71 E.	20.00			
	N. 35½ W.	7.60	12	S. 80 E.	10.00			
	N. 64 W.	24.00						
	N. 22½ W.	15.00		S. 64 E.	20.00			
2	N. 62½ W.	8.75		S. 79 E.	18.00			
				S. 72 E.	4.30			
	N. 31½ W.	5.30		S. 87 E.	9.00			
	N. 36 W.	7.76		S. 66½ E.	4.30			
	N. 59½ W.	13.28		S. 63½ E.	5.50			
3	N. 47 W.	6.77		S. 87½ E.	10.50			
				S. 76 E.	8.70	witness corner at mouth of Lake		
	N. 47 W.	1.98		N. 23½ W.	4.50	up right bank of Lake St. Croix		
	N. 65 W.	6.40		N. 36½ W.	8.60			
	N. 52 W.	15.30		N. 63 W.	14.20			
	N. 65 W.	15.60		N. 77 W.	19.00			
	N. 83 W.	4.00		N. 72 W.	5.00			
4	N. 60 W.	18.70		N. 10 E.	31.60			
				N. 5 E.	8.60			
	N. 42½ W.	5.60	13	N. 11 E.	19.30			
	N. 61½ W.	7.00						
	N. 45 W.	10.00		N. 6 E.	8.00			
	N. 71½ W.	22.00		N. 42 E.	30.00			
	N. 65½ W.	20.00		North	12.00			
5	N. 37 W.	36.00		N. 34 E.	10.00			
			14	N. 21½ E.	22.00			
6	N. 44 W.	6.35		Mis / Chs / Lks				
	N. 40 W.	1.00	Total	11 / 52 / 58				
	N. 34 W.	10.00						
	N. 16½ W.	5.00						
	North	11.50						
	N. 5 W.	7.10						
	North	14.00						
	N. 8¼ E.	10.00						
	North	14.00						
7	N. 9 E.	10.50						
	N. 8 E.	5.42						
	N. 23 E.	10.00						
8	N. 16½ E.	1.90						
	N. 16½ E.	13.20						
	N. 13½ E.	4.00						
	N. 37 E.	3.50						
	N. 6 W.	2.50						
	N. 12 E.	5.00						
	N. 17 E.	5.50						
9	N. 20½ E.	12.30						
Down river from 1st [illegible] Lake.								
10	S. 36½ E.	12.90						
	S. 40½ E.	7.50						
	S. 49 E.	16.70						
	S. 32 E.	11.70						
	S. 18 E.	7.90						
	S. 72 E.	10.20						
	S. 21½ E.	17.50						
	S. 80 E.	6.00						
	N. 75 E.	8.40						
	N. 63½ E.	6.00						
	N. 73 E.	13.00						
	N. 75½ E.	11.50						

Total number of Acres [illegible]

Surveys Designated.	By Whom Surveyed.	Date of Contract.	Amount of Surveys. M. Chs Lks	When Surveyed.	When Charged in the Surr Genl's acct
Township lines.	James M. Marsh	May 23rd 1847	12 – 70 – 40	September 1847	
Subdivisions.	William A. Jones	July 18th 1848	32 – 12 – 13	Oct. & Nov. 1848	

The above Map of Township (Nº 26 North), of Range (Nº 20 West 4th Principal Meridian. Wisconsin) is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

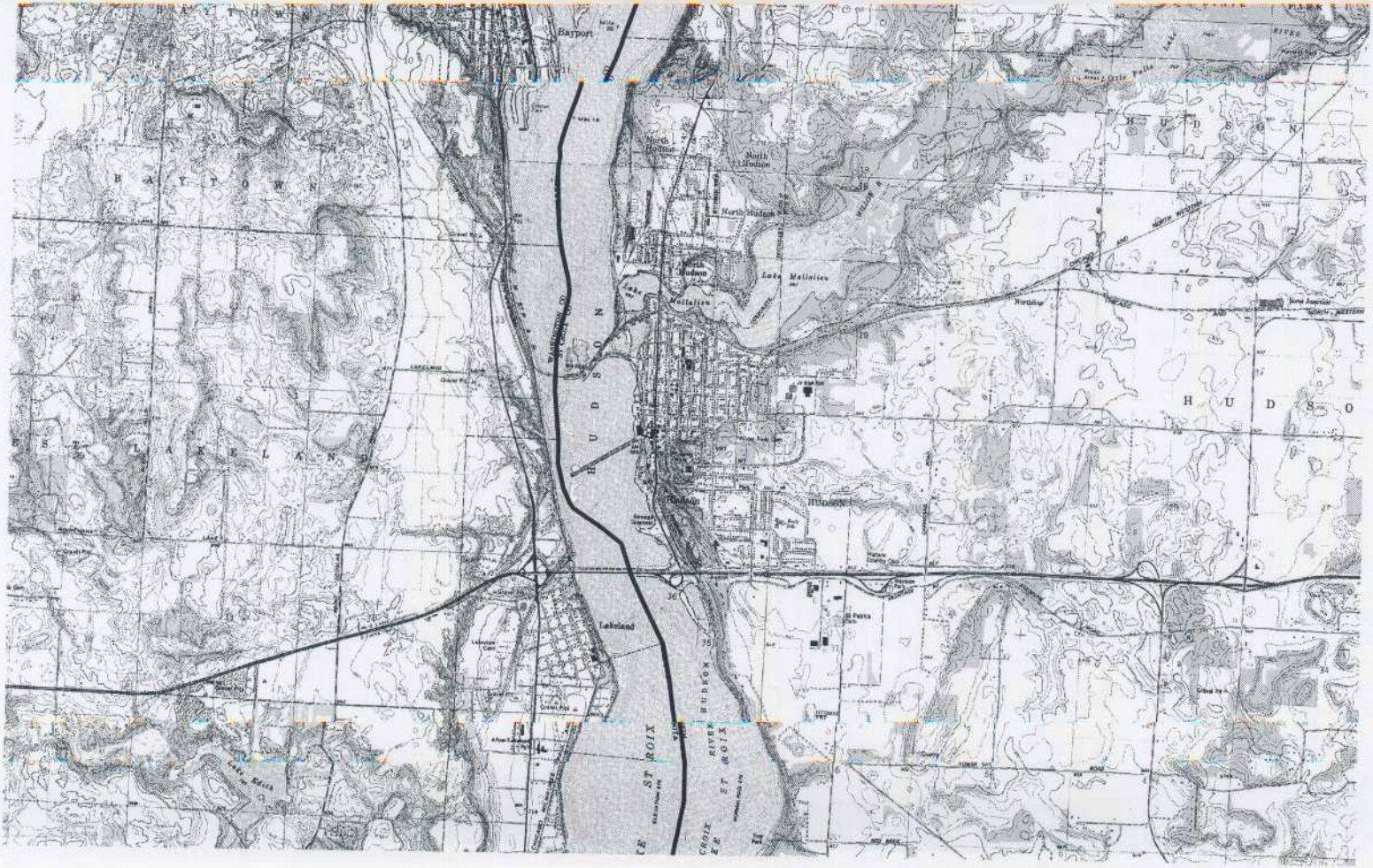
Surveyor Generals Office
Dubuque, December 30, 1848

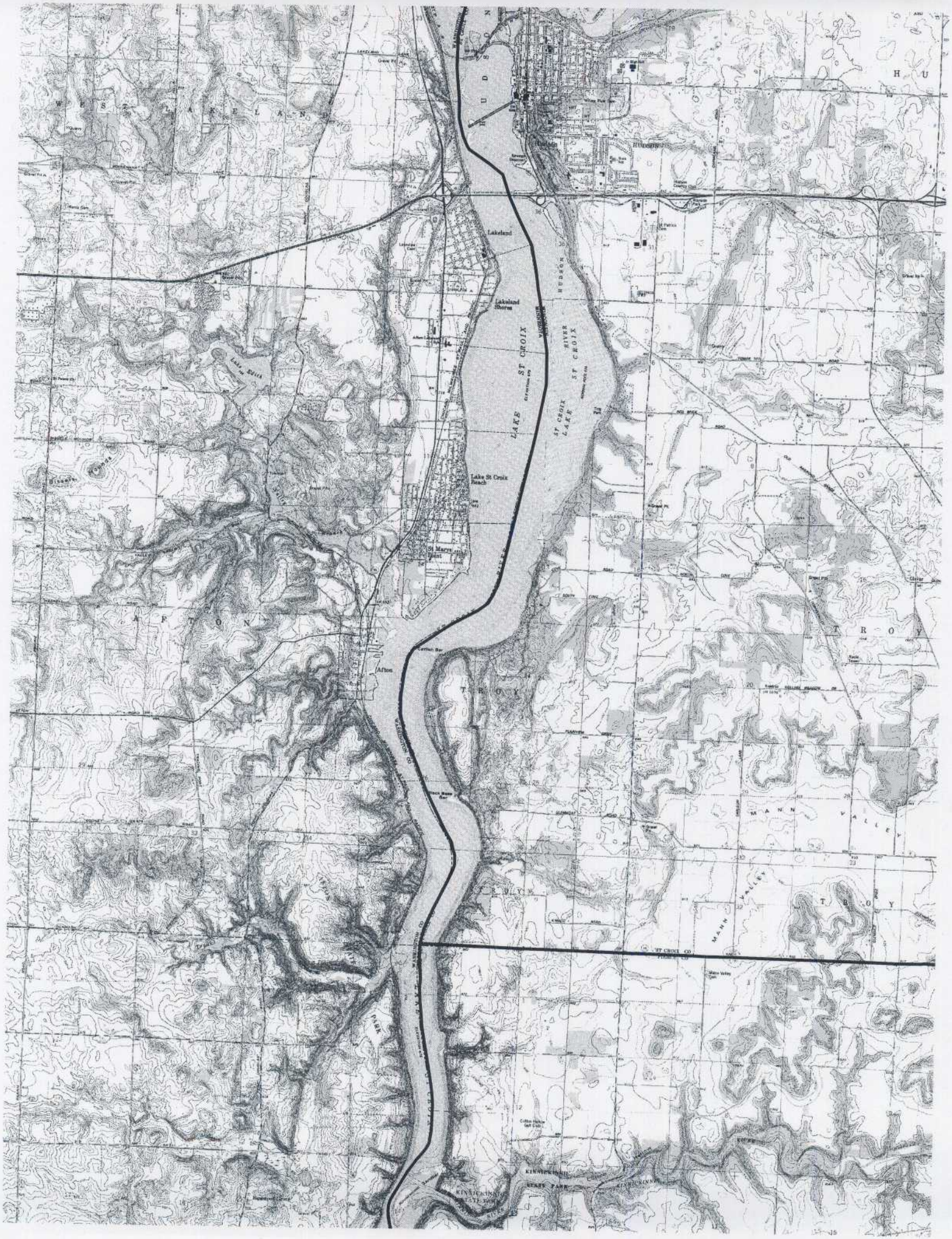
Geo W Jones Surr Genl

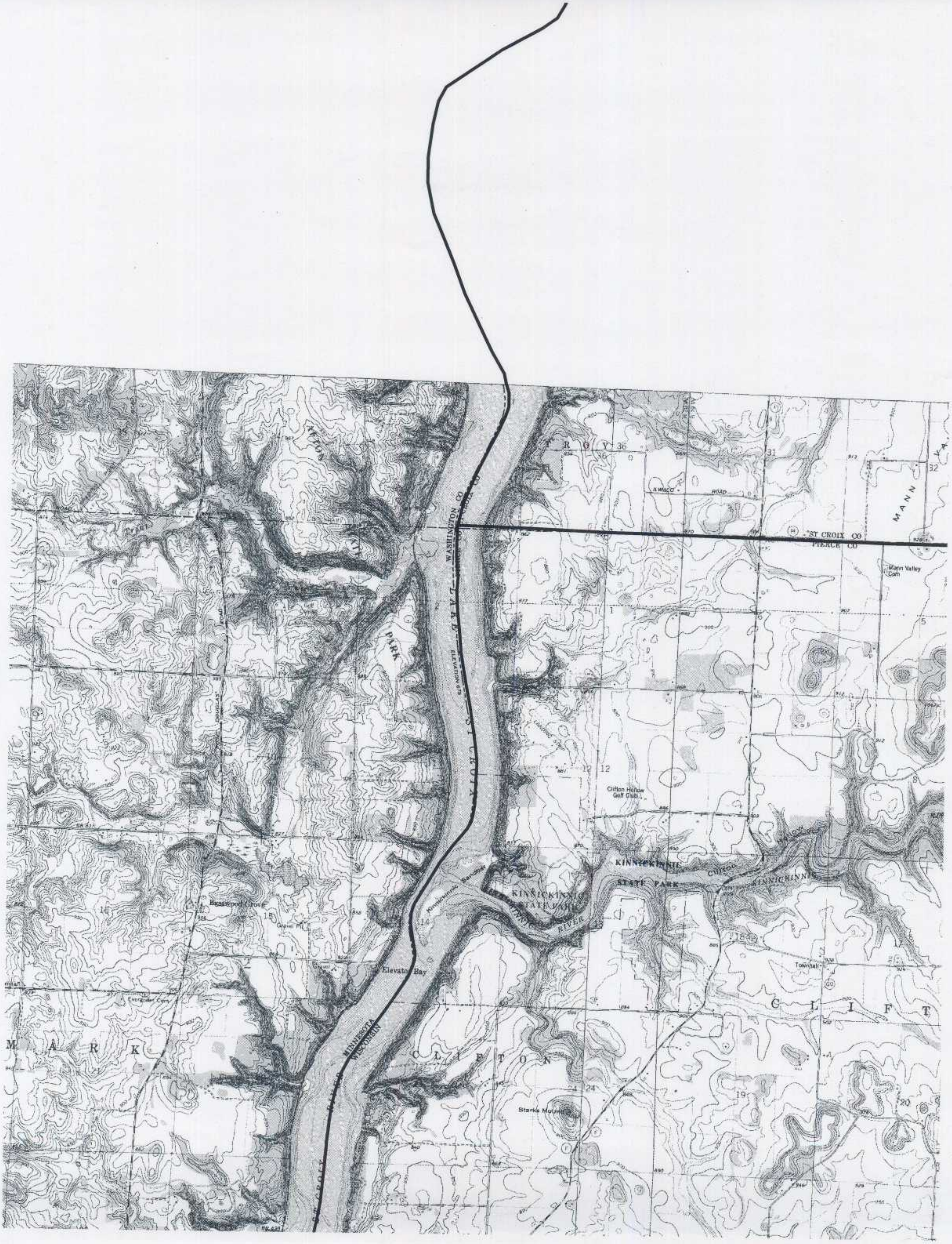
Ex A.10

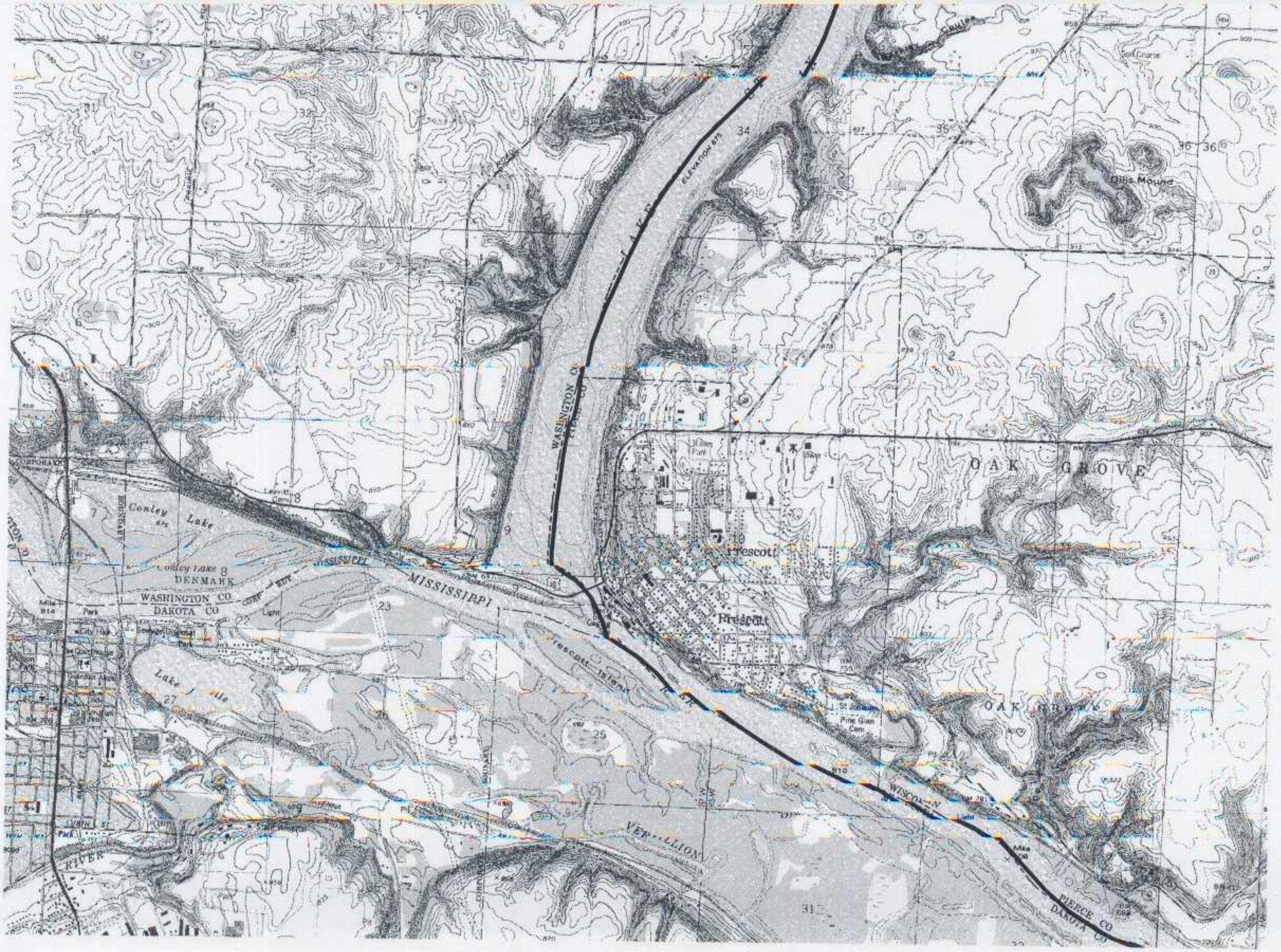
SURFACE WATER ST CROIX CO — GRADIENT IS .2 PER MILE

Terrapin Lake
AMHERST H WILDER
DAY CAMP AREA
M A Y
Square Lake
Big Carnelian Lake
Little Carnelian Lake
S O M E R S E T
Somerset
SOMERSET
STILLWATER
Houlton
S T J O S E P H
WILLOW RIVER STATE PARK


Bayport
North Hudson
Lake Mallalieu
Hudson
Lakeland
Lake Elmo
ST CROIX RIVER
BAYTOWN
HUDSON
LAKELAND


Hudson
Lakeland
Lakeland Shores
Lake St Croix Beach
St Mary's Point
Afton
LAKE ST CROIX
ST CROIX RIVER
ST CROIX LAKE
HUDSON
WASHINGTON CO
ST CROIX CO
MANN VALLEY
KINNICKINNIC STATE PARK
AFTON
TROY


ST CROIX CO
PIERCE CO
Mann Valley Cem
Clifton Hollow Golf Club
KINNICKINNIC
STATE PARK
Elevator Bay
Townhall
Starks Mound
MINNESOTA
WISCONSIN
PARK
ELEVATION 675

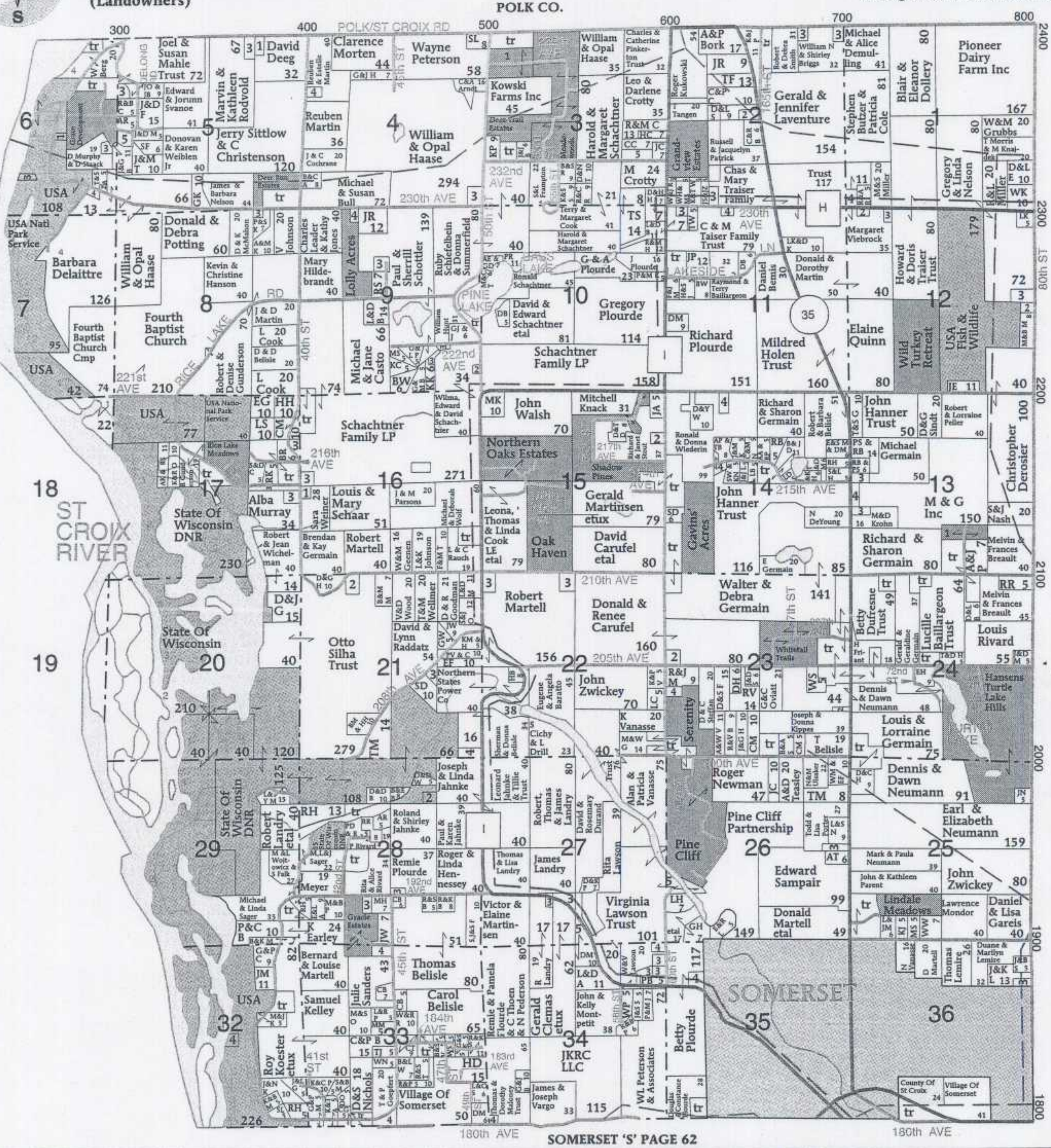


Dills Mound
O A K G R O V E
Prescott
Conley Lake
DENMARK
WASHINGTON CO.
DAKOTA CO
MISSISSIPPI
Prescott Island
Pine Glen Cem
PIERCE CO
DAKOTA CO
RIVER

St. Croix County, Wisconsin

(Landowners)

See Page 112 For Additional Names.



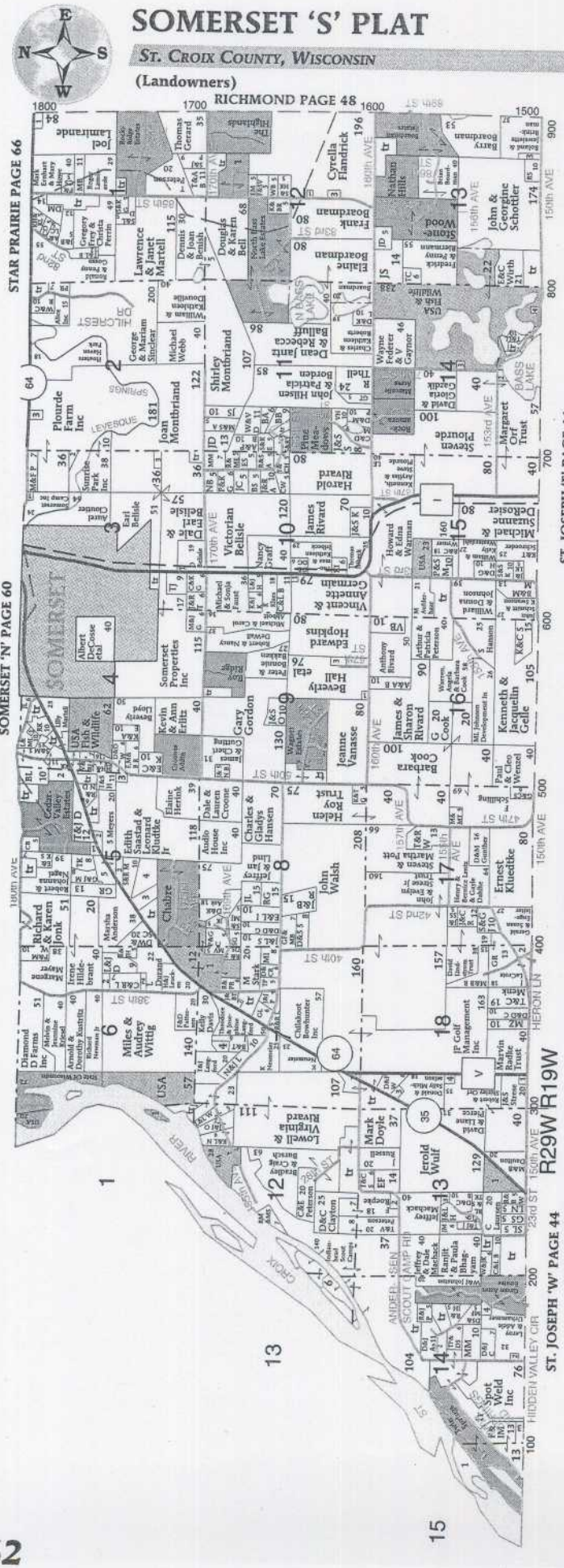
SOMERSET 'S' PLAT

T-30-N ◆ R-20-19-W

St. Croix County, Wisconsin

(Landowners)

See Page 112 For Additional Names.



ST. JOSEPH 'W' PLAT

T-29-30-N ◆ R-20-19-W

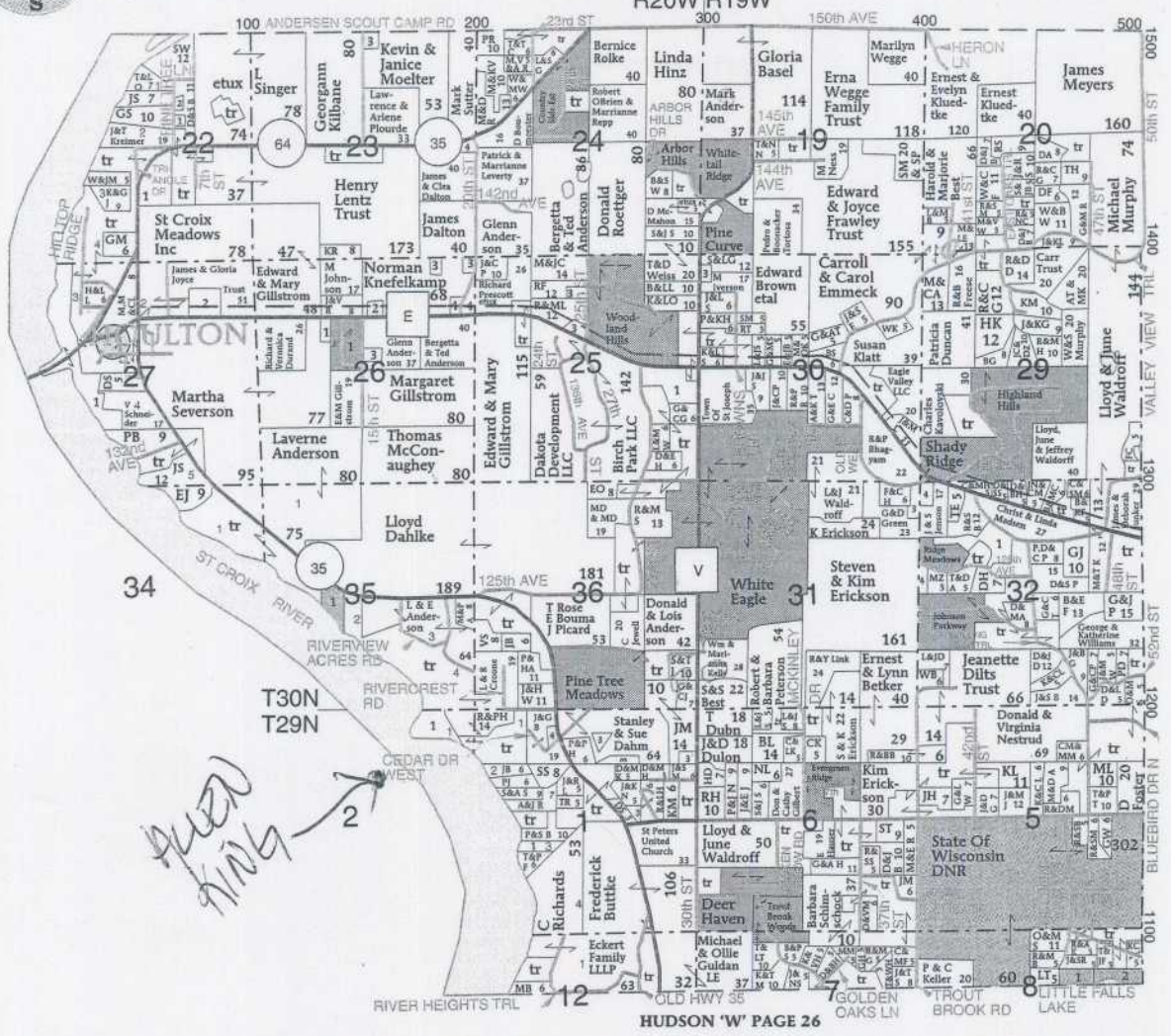
ST. CROIX COUNTY, WISCONSIN

(Landowners)

SOMERSET 'S' PAGE 62

R20W R19W

See Page 112 For Additional Names.



HUDSON 'W' PLAT

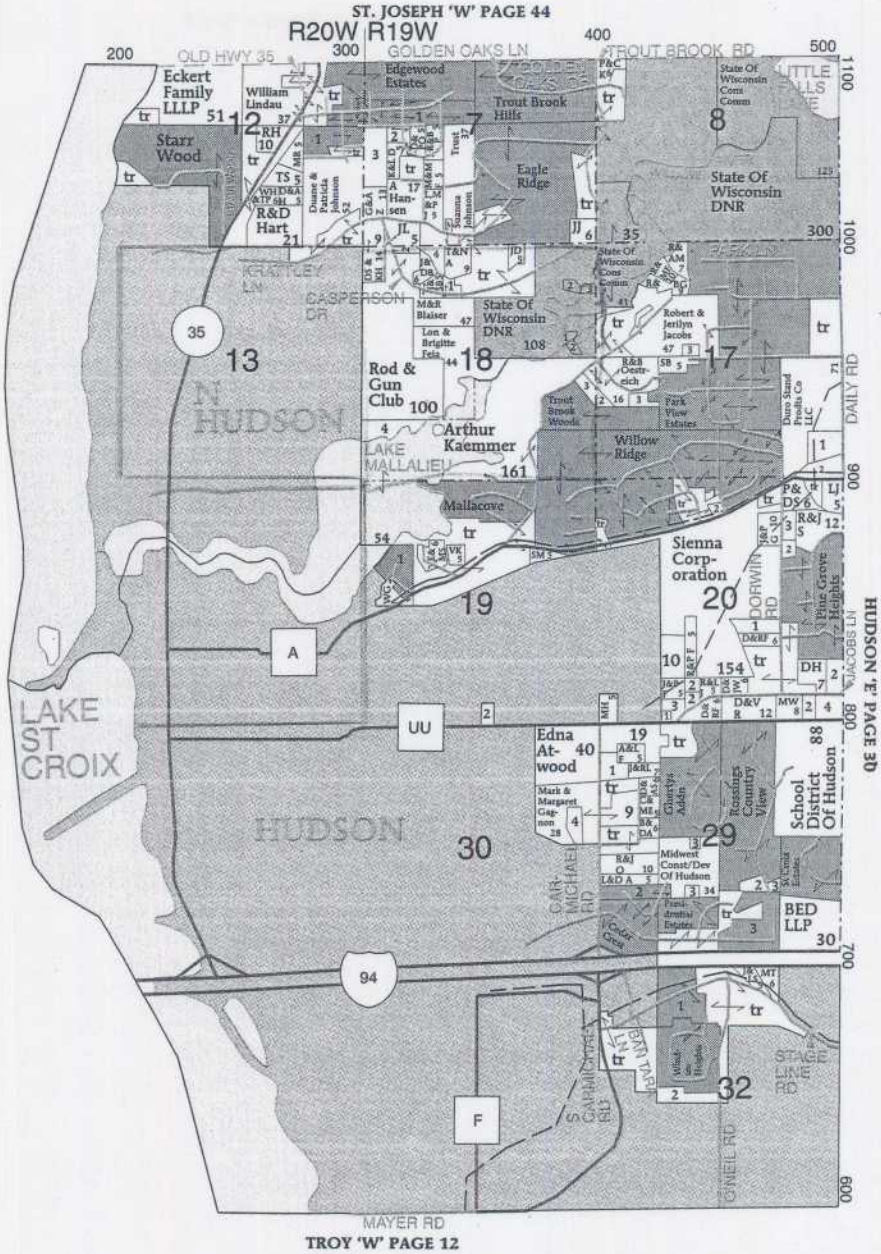
T-29-N ◆ R-20-19-W

ST. CROIX COUNTY, WISCONSIN

(Landowners)

See Page 112 For Additional Names.

ST. JOSEPH 'W' PAGE 44



HUDSON 'E' PAGE 30

TROY 'W' PAGE 12

TROY 'W' PLAT

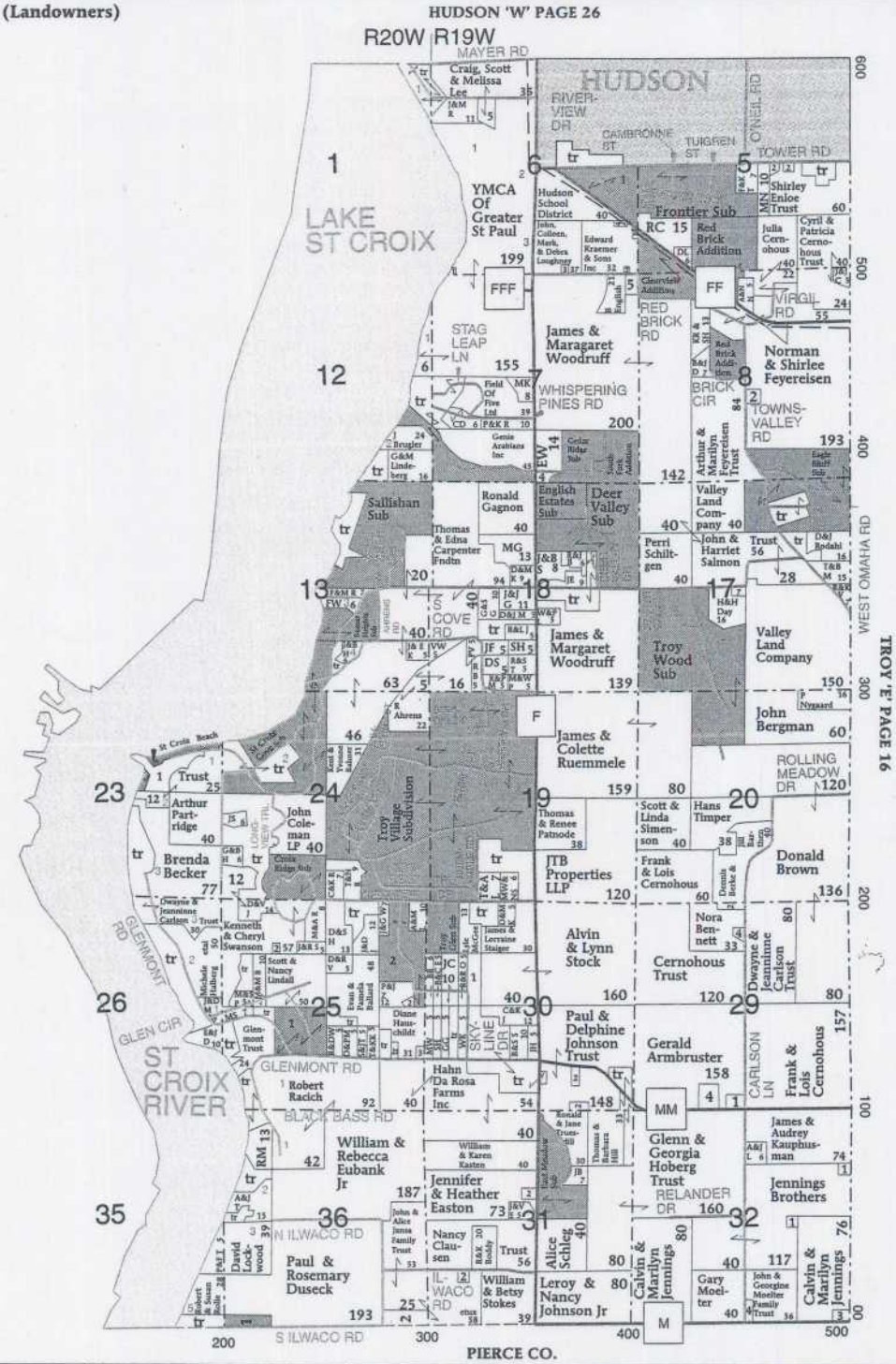
T-28-N ◆ R-20-19-W

ST. CROIX COUNTY, WISCONSIN

(Landowners)

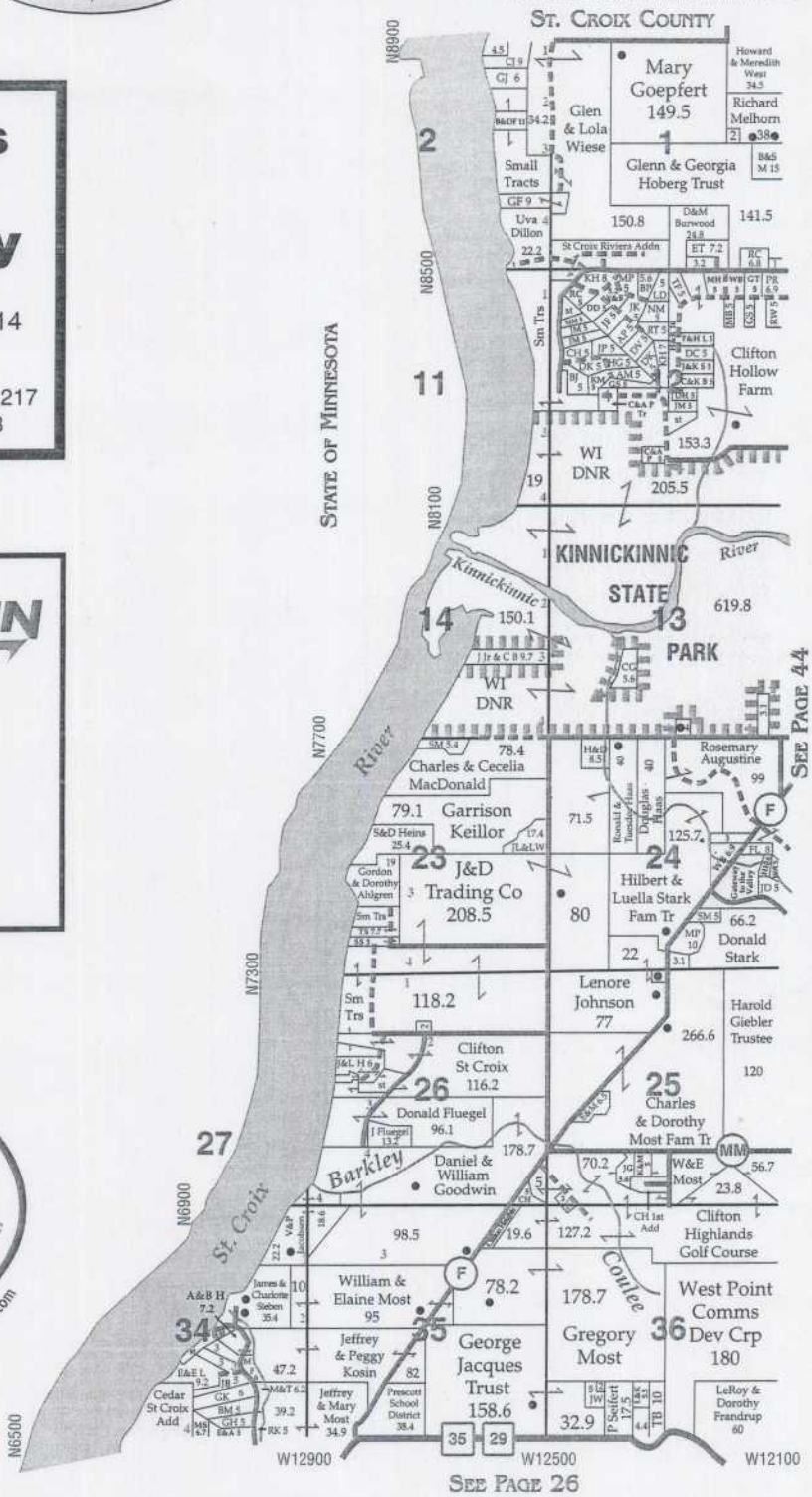
HUDSON 'W' PAGE 26

See Page 112 For Additional Names.

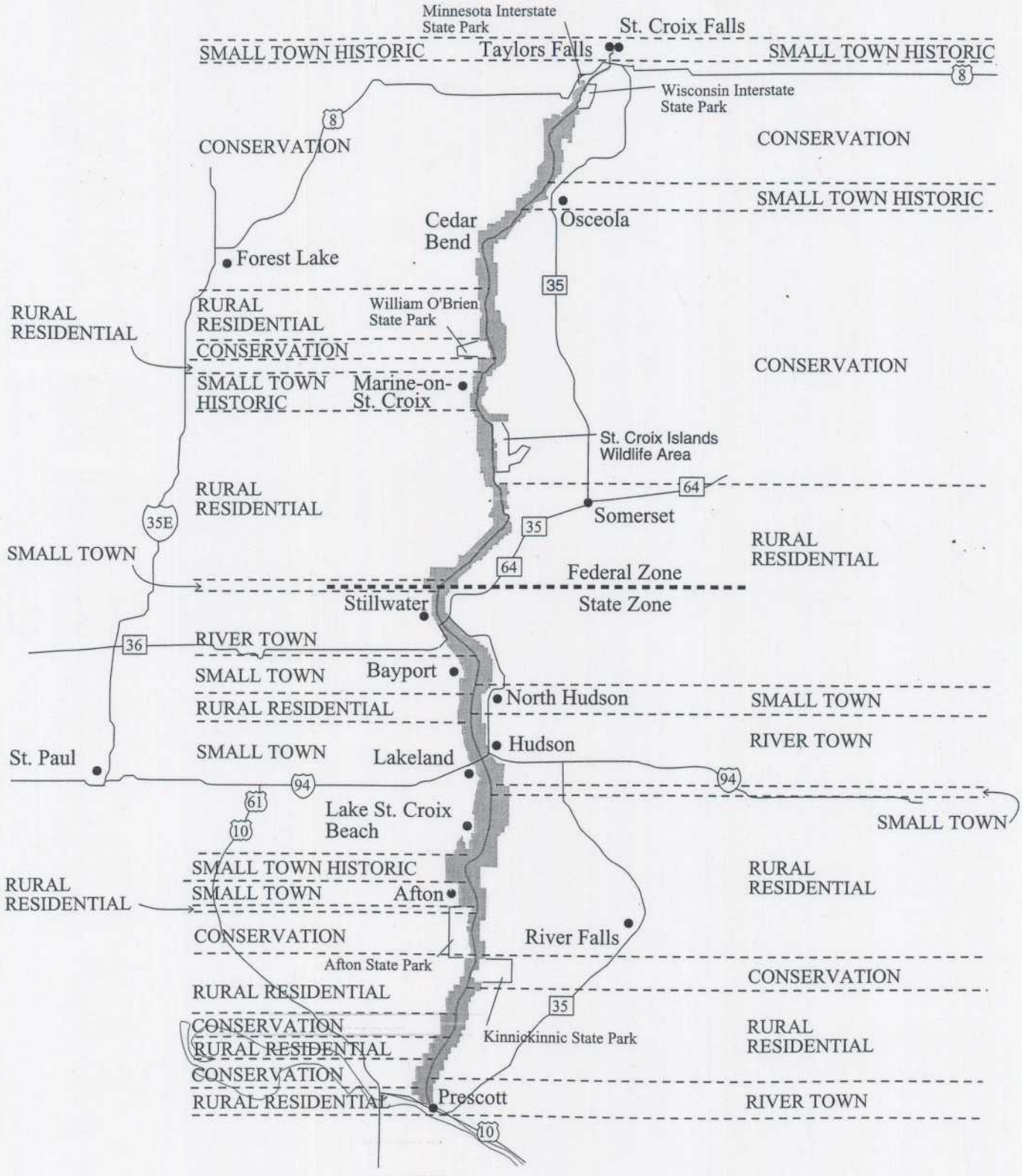


Clifton (W)

T.27N. - R.20W.



Land Management Areas
Lower St. Croix National Scenic Riverway



DSC • 643 • 20025B • 5/00

Post, Eunice A.

From: Denny Darnold [ddarnold@ci.hudson.wi.us]
Sent: Monday, August 29, 2005 1:10 PM
To: Post, Eunice A.
Subject: Re: Shoreland/wetland zoning

Eunice,

The city has referred to and regulated the St. Croix River as a river.

Thanks.

Denny Darnold

----- Original Message -----
From: Post, Eunice A.
To: Denny Darnold
Sent: Monday, August 29, 2005 12:20 PM
Subject: Shoreland/wetland zoning

Denny,

For purposes of shoreland/wetland zoning, does Hudson use the St Croix as a river or a lake?

Eunice

Post, Eunice A.

From: Village of North Hudson [nhvill2@pressenter.com]
Sent: Monday, August 29, 2005 12:26 PM
To: Post, Eunice A.
Subject: Re: zoning

Hi Eunice,
All reference as far as I know is to St. Croix River in our Village Municipal Code Book.
Hope that answers your question.

Donna

-------Original Message-------

From: Post, Eunice A.
Date: 08/29/05 12:23:41
To: Village of North Hudson
Subject: zoning

Hey Donna---

Quick question.....

For purposes of shoreland/wetland zoning does N Hudson use the St Croix as a river or a lake?

E

Post, Eunice A.

From: Jayne Brand [jbrand@prescottcity.org]
Sent: Monday, August 29, 2005 1:25 PM
To: Post, Eunice A.
Subject: RE: Shoreland/wetland

Eunice,

I have always looked at the St. Croix as a river.

How are things going? It is so great to have a city administrator. He has taken on a lot here when it comes to planning because that is his background. I don't have to attend all of the meetings at night like I use to and I have been able to work on several projects that I have had going for months here.

Hope things are well with you.

Jayne Brand

From: Post, Eunice A. [mailto:Eunice.Post@dnr.state.wi.us]
Sent: Monday, August 29, 2005 11:21 AM
To: Jayne Brand
Subject: Shoreland/wetland

Hey Jayne

For purposes of shoreland/wetland zoning does Prescott use the St Croix as a river or a lake?

E

Post, Eunice A.

From: Jennifer Shillcox [jennifers@co.saint-croix.wi.us]
Sent: Monday, August 29, 2005 2:59 PM
To: Post, Eunice A.
Subject: RE: Shoreland/wetland

A river!

-----Original Message-----
From: Post, Eunice A. [mailto:Eunice.Post@dnr.state.wi.us]
Sent: Monday, August 29, 2005 12:22 PM
To: Jennifer Shillcox
Subject: Shoreland/wetland

Hi Jenny,

Quick question…
For purposes of shoreland/wetland zoning does the county use the St Croix as a river or a lake?

E

Post, Eunice A.

From: Jim Kleinhans [jkleinha@co.pierce.wi.us]
Sent: Monday, August 29, 2005 3:26 PM
To: Post, Eunice A.
Subject: RE: zoning

I believe we have had this conversation previously but not electronically. The shoreland zoning code lists the St. Croix as a river as does the plat book. The county St. Croix Riverway code refers to it as a river. I don't know that it would make too much difference if we refer to that water body as a lake or a river because the riverway district at least 1,000 feet wide along most of the Pierce County border so the riverway district should cover any filling and grading permits. Have a good week See you on friday.

-----Original Message-----
From: Post, Eunice A. [mailto:Eunice.Post@dnr.state.wi.us]
Sent: Monday, August 29, 2005 12:23 PM
To: Jim Kleinhans
Subject: zoning

Hey Jim

Quick question…

For purposes of shoreland/wetland zoning does Pierce use the St Croix as a river or a lake?

E

	BS +	HI	FS −	Elev.	
BM	5.07	696.95		691.88	BM 415 I
			5.58	691.37	✓
			7.1	689.85	
			11.4	685.55	
			13.9	683.05	
			15.3	681.65	✓
			16.6	680.35	✓
			18.2	678.75	
			19.5	677.45	
W.L.			20.78	676.17	
		→	11.20	685.75	[illegible]
			11.00	685.[illegible]	[illegible]
BM 415 I			5.07	691.88	OK
	21.75	697.92		676.17	W.L.
			0.48	697.44	
			[illegible].2	[illegible]	✓
			2.0	695.92	✓
			16.4	681.52	✓
			20.5	677.42	
			17.5	680.42	
			21.76	676.16	W.L.

Lake St Croix 8/3/94

Sunny, Calm, 80°F — Coke [level symbol] [book symbol] — Koich [rod symbol]

WESTERN MOST RR TRACK @ LAKE MALLY DAM
20' W OF RR – TOP OF BANK
30' W " "
40' W " " – TOE OF RR BANK FILL
50' W " "
60' W " "
75' W " " @ EDGE OF SEDGE
100' W " " @ EDGE OF RIPRAP
109' W " " @ EDGE OF WATER
≈ 250' S OF ABOVE PROFILE – WASH MARK @ EXPOSED ROOT
≈ 150' S. OF PROFILE BASE OF EROSION MARK
DIFF = 0.03 ✓

N. RAIL @
BASE OF TRACK FILL 5' NORTH OF N. RAIL
25' N. OF N. RAIL – TOP OF BANK
TOE FILL – 55' N. OF N. RAIL
95' N. OF N. RAIL – LOW POINT OF CHANNEL
30' W OF E. END
HIGH PT OF SAND BAR – N. OF CHANNEL – 118' N OF N. RAIL
→ OK DIFF = 0.01

	BS+	HI	FS-	Elev	
	11.62	687.79		676.17	W.L.
			4.9	682.89	✓
			2.4	685.39	✓
			0.9	686.89	✓
TP,			2.65	685.14	✓
	7.84	692.98			
			4.5	688.48	✓
.			4.9	688.08	
W.L.			16.80	676.18	W.L.

150' N. OF W. RAIL - HIGH POINT OF ISLAND
250' " " " " " " "
400' " " " " " " "
725' " " " " " " "
810' " " " " " " "

1000' N " " " " "

OK - DIFF = 0.01' 1088'

Waterway and Wetland Handbook
CHAPTER 40
ORDINARY HIGH-WATER MARK (OHWM)

GUIDANCE PURPOSE AND DISCLAIMER

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule apply. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance cannot be relied upon and does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decision made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes, common law and administrative rules to the relevant facts.

This file is an electronic version of a chapter of the Waterway and Wetland Handbook. This document was scanned from the master handbook chapter kept at the Bureau of Fisheries and Habitat Protection central office in Madison. All effort was made to ensure this scanned electronic copy is an actual copy of the hardcopy document. Due to the electronic scanning process, there may be rare instances of typographical errors, omissions or improperly formatted pages. Please refer to the master handbook if accurate transcription is required.

I. Purpose

The delineation of the ordinary high-water mark (OHWM) is a critical element in the administration of Wisconsin water law and is necessary for an effective water management program. The OHWM is the boundary between riparian owned uplands and the publicly owned beds of natural lakes. It is the boundary of public rights and interest in the waters of navigable streams and lakes except when the water is above the OHWM public rights are "enlarged." When the water is below the OHWM a riparian owner has a qualified right to use the land between the actual water level and the OHWM.

Department field staff determine the OHWM through on-site investigation and analysis of physical and biological indicators on a case-by-case basis.

II. Definition of OHWM in Wisconsin

Although "ordinary high-water mark" was used in a number of Wisconsin Supreme Court cases in the 1800's, the first definition of ordinary high-water mark is found in the Wisconsin Supreme Court case Lawrence v. American Writing Paper Co. (1911), 144 Wis. 556, 562:

> ...ordinary high-water mark, that is the point up to which the presence and action of the water is so continuous as to leave a distinct mark by erosion, destruction of vegetation, or other easily recognized characteristic.

Three years later the Supreme Court redefined and expanded the definition in Diana Shooting Club v. Husting (1914), 156 Wis. 261, 272:

> By ordinary high-water mark is meant the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic.

One of the contentions in the Diana case had been that public rights in navigable waters "consists of nothing more than a right to pass to and from over the open waters" and that a person had "no right to leave the open part of the stream or push into the vegetation" growing through or above the water along the bank or shore. The Supreme Court did not accept this contention, ruling that public rights in navigable waters extend between the boundaries of the ordinary high-water marks and it is immaterial "what the character of the stream or waters is. It may be deep or shallow, clear or covered with aquatic vegetation." The Court then added the wording "on the bank or shore" and the word "terrestrial" to the Lawrence definition to emphasize that the ordinary high-water mark is not at the edge of open water adjacent to aquatic vegetation but on the bank or shore where terrestrial vegetation either begins or is destroyed.

The "distinct mark" must be manifested by "erosion, destruction of terrestrial vegetation or other easily recognizable characteristic"; however only one of the preceding manifestations need be present to qualify as such a mark. The phrase "other easily recognized characteristic" is highly significant since it allows flexibility as to what indicators in the natural environment qualify as the water-established mark.

Diana also stated:

> And where the bank or shore at any particular place is of such character that it is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below the ordinary high-water mark.

This tells us two things: the area below the ordinary high-water mark need not be covered with water at all times, and where no mark can be found, one can look for marks in other areas and transfer the information through stage or elevation readings. No court cases have specified what a reasonable distance is to find the OHWM at another site nor whether marks must be transferred from similar areas. No court decisions have modified the Diana definition. The Diana definition is flexible and gives the Department the latitude to analyze varying physical conditions.

The courts have not upheld OHWM determinations which were not based on biological or physical indicators. In the case State v. McDonald Lumber Co. (1962) 18 Wis. (2d) 173, the state charged that the defendant illegally placed fill on the bed of Green Bay. The state did not attempt to use the Diana definition to prove the fill was below the OHWM of Green Bay because all the adjacent land was disturbed. Instead, the state offered an elevation for the ordinary high-water mark based on Lake Michigan water level records compiled by the Army Corps of Engineers for the period 1860-1959. The state asserted that the average of the high-water levels recorded was 581.0 feet above sea level and thus the ordinary high-water mark was at that elevation. The trial court found McDonald guilty of filling part of the lakebed but refused to order removal of the fill because the location of the ordinary high-water mark, the boundary of the lakebed, was not proved by the state.

The Supreme Court sustained the trial court's decision ruling that "the term ordinary high-water mark has been defined in Diana Shooting Club v. Husting (1914), 156 Wis. 261, 172," and "that the location of such ordinary high-water mark was not proved by the state" by its use of water level records.

III. Public and Riparian Rights

In Wisconsin riparian rights vary in accordance with the nature of the body of water. With respect to the

Company, supra.

IV. Determining the Ordinary High-Water Mark

A. What to look for when making an OHWM Determination

1. Biological Indicators:

   a. Mosses: mosses which are located on exposed rocks, stumps, tree roots, etc., are usually considered terrestrial and the lowermost elevation of these mosses is a good indicator of the OHWM. Some water mosses (e.g. Drepanocladus) form long strings and are aquatic and should not be used as indicators of the OHWM.

   b. Lichen: use these indicators with care for determining the OHWM. Use them mainly for recent, relatively short duration high water stage indicators. Extended high water periods eventually will kill and remove various lichen. Types to look for:

      1. Coarse brown lichen - usually lie above extreme high lake stages.

      2. Black - usually removed readily by water inundation.

      3. Orange Lichen - intermediate in their susceptibility to water destruction.

      4. Green Lichen - the lower most elevation of this lichen can indicate the highest water mark in recent years.

   c. Trees: the roots of living trees and shrubs along the shoreline will turn up and away from the water. Exposed bases and roots of older trees with roots growing primarily toward the shoreland on a horizontal plane are usually just above the OHWM if no slumpage has occurred.

      1. Water roots: Willow trees on the bank will put out red-brown water roots. The start of the water roots will be very near the OHWM. Beware of slumpage.

      2. Pancake roots: Birch, maples, tag alder and tamarack will form pancake shaped root mats usually just above the OHWM. Beware of slumpage.

      3. Pipe elbow roots: Birch and maple will curve their roots away from water forming a pipe elbow bend. The bottom of the root as it bends away will be very near the OHWM. Beware of slumpage.

   d. Pollen: pollen - especially pine pollen - often leaves marks on shore (particularly on large rocks) during spring and early summer. Not an indicator when considered by itself but will indicate recent high-water stages.

   e. Large Cattail Mat: The top of large cattail mats are often slightly above OHWM. Be careful of hummocks, floating bogs and mats, but be aware of where they exist in relation to your determination site.

   f. Algae stain: On rocks, stumps, etc. look for algae stain lines. On some rocks etc. it is possible that

you find a algae/lichen stain line. Algae marks should not be used as the sole basis for a OHWM determination. Because of high water stages and wave splash algae can grow above the OHWM.

2. Physical indicators: [other easily identified characteristics]

   a. Ice Scars: on trees, soil, etc. Ice marks are usually above the OHWM. Caution prevails in using these, because floods, wind and/or ice expansion can cause ice marks well above the OHWM. They are a good indication of the proximity of the OHWM and can help in a final determination.

   b. Erosion (from wave wash): try using small bays where large waves from high winds would not wash above the OHWM.

   c. Mudstains and debris: Mudstains on trees, stumps, rocks, etc. give a good indication of the proximity of the OHWM. The OHWM will usually be located below the mudstains and debris.

   d. Water stains on rocks, culverts, seawalls, etc.: Water stains on fixed objects are excellent indicators of the OHWM. Generally there will be three stain lines on the object (from the bottom) a gray band, a band of lighter color, and then another band of gray or black. The OHWM is located at the line between the lighter color band and the top dark band.

   e. Leachate marks in the soil: Dig into the immediately adjoining shoreland. Long-term water levels will sometimes leave stain marks in light colored soils known as mottling. Iron is the main coloring substance of the subsoil. Air is absent or in short supply when soils become saturated or nearly saturated with water. When air is absent in the soil, iron exists in the reduced state which is gray in color. When an air supply is present as in well drained soils, the iron is in an oxidized state which is yellowish or reddish in color. Imperfectly and poorly drained soils are nearly always mottled with various shades of gray, brown and yellow, especially within the zone of fluctuation of the water table. Some mottled colors occur unassociated with poor drainage past or present, therefore, such stains should be carefully compared with other indicators. Remember the highest past water level is not necessarily the OHWM.

   f. Change in soil types: Dig into the soil or take cores looking for a change from organic (peat-muck) to mineral soils. Although a soil developing under water may have a high mineral content (usually from water or wind born addition) a soil with a high or exclusive content of organic matter cannot form under well-drained conditions. The presence of a peat or muck profile is therefore a good indicator of a water level that is perpetually at or above the soil surface and thus of an OHWM.

B. Additional considerations

1. Cattails: don't use cattails as sole indicators of the OHWM. Cattail is a clone plant that can be found above and below the OHWM. It is extremely tolerant to extremes in water conditions.

2. Water crawfoot: extremely tolerant of dry conditions, similar to cattails.

3. Steep, cliff areas: avoid steep cliff areas because slumpage of terrestrial vegetation will undoubtedly occur.

4. Disturbed areas: avoid disturbed areas because OHWM indicators will probably be destroyed or absent. If necessary, determine the OHWM elsewhere and transfer the elevation of the OHWM to the disturbed area.

5. Wave windrow areas: avoid wave windrow areas because aquatic and terrestrial vegetation may be smothered by wave carried materials (sand).

6. Trapped water: areas where water is trapped by ice ridges, etc., can indicate an elevated OHWM.

7. Pollen, algae marks as the sole basis: such marks are usually located above the OHWM. Pollen, especially pine pollen, often leaves yellowish marks particularly on large rocks during spring and early summer.

8. Averaging elevations of OHWM determinations. Individual determinations at the same location should be within 0.1 ft. in elevation. Do not average elevations.

9. Winds can cause increased water elevations at ends of long lakes. You may have to return on a calmer day to make an accurate determination of water level with reference to a benchmark. Water levels on the opposite sides of lakes elongated especially in an east and west direction could be effected by prevailing winds. There is therefore a possibility that the OHWM on the east and west ends of such lakes may be at different elevations. If you suspect this to be the case, level work should be tied into U.S.G.S. benchmarks or other reliable datum.

10. On lakes or flowages which are controlled by a dam, be wary of drawdowns, erratic level control operations, broken or missing flashboards, etc., that have or could affect water levels and thus the OHWM.

11. When you have a body of water with an inflow and/or an outflow one of the first things to do in an OHWM determination is to check these locations to see if there are any unusual conditions that could affect your conclusions such as blockages of the inlet or outlet, broken flashboards on the outlet dam, etc. It is also a good idea to tour most of the shoreline and note undisturbed areas before proceeding. If a map of the water body is available, these areas should be marked on the map for further investigation.

12. Remember the highest past water level is not necessarily the OHWM. Whenever possible existing past data on water level reading should be consulted in the determination of the OHWM.

13. Court decisions usually involve the question: could a prudent person have reached the same conclusion as you did in you OHWM determination?

V. How to Locate and Document the OHWM

1. Ordinary High-Water Mark determinations are to be made according to the definition in Diana Shooting Club vs. Husting 156 Wis. 261 (1914).

2. Check district and area files for previous OHWM determinations on the same waterbody. Also check all existing past water level readings.

3. Determine the OHWM using the physical and biological features (indicators) previously identified. Measure the distance of the indicators above or below the water level on the day(s) of observation. The water level on the day(s) of observation should be referenced to an easily identifiable benchmark (one method is to measure down from a culvert or wall to the water level). This benchmark (a measurement spot) should be carefully described and its exact location recorded in writing on the checklist, so that it can be found with ease at a future date if needed.

4. Find another spot near your first measurement and repeat the process. Take an adequate number of

measurements and notes before reaching a conclusion. Elevations of OHWM indicators should generally be within 0.1 feet of each other.

5. You should tie the OHWM elevation into a benchmark of known elevation. The checklist has a space for the elevation of the OHWM. This information could be especially useful when it is necessary to transfer the elevation of an OHWM to an area where there is no distinct mark. The checklist could be consulted to see if there are any OHWM determinations near the site where there was no mark. Then pursuant to Diana, the elevation can be transferred to the site where an OHWM determination is needed.

6. If early aerial photographs or maps of the area exist, they will serve as excellent evidence to support the location of a former shoreline which existed prior to disturbance. You can locate these through local Soil Conservation Services (SCS) offices, the Tomahawk DNR office and the Department of Transportation's Highway Testing Lab in Madison.

7. If you need assistance after exhausting district resources contact the Water Regulation Section.

VI. Educational Materials

There are three pamphlets produced by the Department which should be useful in educating the public on the OHWM and Wisconsin water law:

Wisconsin's Water Regulation Programs Work for You provides a general outline of water regulation permit program.

Public or Private I - Navigability discusses the concept of navigability and how it affects private rights.

Public or Private II - The Ordinary High-Water Mark discusses the relationship of the OHWM to private and public rights.

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